

STATUTORY CHANGES RENDERED NECESSARY BY *OBERGEFELL*

PART I – STATUTES THAT SHOULD BE NON-CONTROVERSIAL

CHAPTER 7A – JUDICIAL DEPARTMENT

§ 7A-292. Additional powers of magistrates.

(a) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

- (1) To administer oaths.
- (2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina.
- (3) When authorized by the chief district judge, to take depositions and examinations before trial.
- (4) To issue subpoenas and capiases valid throughout the county.
- (5) To take affidavits for the verification of pleadings.
- (6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41.
- (7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes.
- (8) To take acknowledgments of instruments, as provided in G.S. 47-1.
- (9) To perform the marriage ceremony, as provided in G.S. 51-1.
- (10) To take acknowledgment of a written contract or separation agreement between ~~husband and wife~~ individuals married to each other.
- (11) Repealed by Session Laws 1973, c. 503, s. 9.
- (12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.
- (13) Repealed by Session Laws 1973, c. 503, s. 9.
- (14) To accept the filing of complaints and to issue summons pursuant to Article 4 of Chapter 42A of the General Statutes in expedited eviction proceedings when the office of the clerk of superior court is closed.

- (15) When authorized by the chief district judge, as permitted in G.S. 7A-146(11), to provide for appointment of counsel and acceptance of waivers of counsel pursuant to Article 36 of this Chapter.
- (16) To appoint an umpire to determine motor vehicle liability policy diminution in value, as provided in G.S. 20-279.21(d1).

(b) The authority granted to magistrates under G.S. 51-1 and subdivision (a)(9) of this section is a responsibility given collectively to the magistrates in a county and is not a duty imposed upon each individual magistrate. The chief district court judge shall ensure that marriages before a magistrate are available to be performed at least a total of 10 hours per week, over at least three business days per week.

CHAPTER 7B – JUVENILE CODE

§ 7B-1109. Adjudicatory hearing on termination.

(a) The hearing on the termination of parental rights shall be conducted by the court sitting without a jury and shall be held in the district at such time and place as the chief district court judge shall designate, but no later than 90 days from the filing of the petition or motion unless the judge pursuant to subsection (d) of this section orders that it be held at a later time. Reporting of the hearing shall be as provided by G.S. 7A-198 for reporting civil trials.

(b) The court shall inquire whether the juvenile's parents are present at the hearing and, if so, whether they are represented by counsel. If the parents are not represented by counsel, the court shall inquire whether the parents desire counsel but are indigent. In the event that the parents desire counsel but are indigent as defined in G.S. 7A-450(a) and are unable to obtain counsel to represent them, counsel shall be appointed to represent them in accordance with rules adopted by the Office of Indigent Defense Services. The court shall grant the parents such an extension of time as is reasonable to permit their appointed counsel to prepare their defense to the termination petition or motion.

(c) The court may, upon finding that reasonable cause exists, order the juvenile to be examined by a psychiatrist, a licensed clinical psychologist, a physician, a public or private agency, or any other expert in order that the juvenile's psychological or physical condition or needs may be ascertained or, in the case of a parent whose ability to care for the juvenile is at issue, the court may order a similar examination of any parent of the juvenile.

(d) The court may for good cause shown continue the hearing for up to 90 days from the date of the initial petition in order to receive additional evidence including any reports or assessments that the court has requested, to allow the parties to conduct expeditious discovery, or to receive any other information needed in the best interests of the juvenile. Continuances that extend beyond 90 days after the initial petition shall be granted only in extraordinary circumstances

when necessary for the proper administration of justice, and the court shall issue a written order stating the grounds for granting the continuance.

(e) The court shall take evidence, find the facts, and shall adjudicate the existence or nonexistence of any of the circumstances set forth in G.S. 7B-1111 which authorize the termination of parental rights of the respondent. The adjudicatory order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the termination of parental rights hearing. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

(f) The burden in such proceedings shall be upon the petitioner or movant and all findings of fact shall be based on clear, cogent, and convincing evidence. The rules of evidence in civil cases shall apply. No ~~husband-wife~~ marital privilege or physician-patient privilege shall be grounds for excluding any evidence regarding the existence or nonexistence of any circumstance authorizing the termination of parental rights.

§ 7B-3503. Hearing.

The court, sitting without a jury, shall permit all parties to present evidence and to cross-examine witnesses. The petitioner has the burden of showing by a preponderance of the evidence that emancipation is in the petitioner's best interests. Upon finding that reasonable cause exists, the court may order the juvenile to be examined by a psychiatrist, a licensed clinical psychologist, a physician, or any other expert to evaluate the juvenile's mental or physical condition. The court may continue the hearing and order investigation by a juvenile court counselor or by the county department of social services to substantiate allegations of the petitioner or respondents.

No ~~husband-wife~~ marital privilege or physician-patient privilege shall be grounds for excluding any evidence in the hearing.

CHAPTER 8 - EVIDENCE

§ 8-56. ~~Husband and wife~~ Spouses as witnesses in civil action.

In any trial or inquiry in any suit, action or proceeding in any court, or before any person having, by law or consent of parties, authority to examine witnesses or hear evidence, the ~~husband or wife~~ spouse of any party thereto, or of any person in whose behalf any such suit, action or proceeding is brought, prosecuted, opposed or defended, shall, except as herein stated, be competent and compellable to give evidence, as any other witness on behalf of any party to

such suit, action or proceeding. ~~No husband or wife~~ Neither spouse shall be compellable to disclose any confidential communication made by one to the other during their marriage.

§ 8-57. ~~Husband and wife~~ Spouse as witnesses in criminal actions.

(a) The spouse of the defendant shall be a competent witness for the defendant in all criminal actions, but the failure of the defendant to call such spouse as a witness shall not be used against him. Such spouse is subject to cross-examination as are other witnesses.

(b) The spouse of the defendant shall be competent but not compellable to testify for the State against the defendant in any criminal action or grand jury proceedings, except that the spouse of the defendant shall be both competent and compellable to so testify:

- (1) In a prosecution for bigamy or criminal cohabitation, to prove the fact of marriage and facts tending to show the absence of divorce or annulment;
- (2) In a prosecution for assaulting or communicating a threat to the other spouse;
- (3) In a prosecution for trespass in or upon the separate lands or residence of the other spouse when living separate and apart from each other by mutual consent or court order;
- (4) In a prosecution for abandonment of or failure to provide support for the other spouse or their child;
- (5) In a prosecution of one spouse for any other criminal offense against the minor child of either spouse, including any child of either spouse who is born out of wedlock or adopted or a foster child.

(c) ~~No husband or wife~~ Neither spouse shall be compellable in any event to disclose any confidential communication made by one to the other during their marriage.

§ 8-57.1. ~~Husband and wife~~ Marital privilege waived in child abuse.

Notwithstanding the provisions of G.S. 8-56 and G.S. 8-57, the ~~husband and wife~~ marital privilege shall not be ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the Child Abuse Reporting Law, Article 3 of Chapter 7B of the General Statutes of North Carolina.

CHAPTER 14 – CRIMINAL LAW

§ 14-259. Harboring or aiding certain persons.

It shall be unlawful for any person knowing or having reasonable cause to believe, that any person has escaped from any prison, jail, reformatory, or from the criminal insane department of any State hospital, or from the custody of any peace officer who had such person in charge, or that such person is a convict or prisoner whose parole has been revoked, or that such person is a fugitive from justice or is otherwise the subject of an outstanding warrant for arrest or order of arrest, to conceal, hide, harbor, feed, clothe or otherwise aid and comfort in any manner to any such person. Fugitive from justice shall, for the purpose of this provision, mean any person who has fled from any other jurisdiction to avoid prosecution for a crime.

Every person who shall conceal, hide, harbor, feed, clothe, or offer aid and comfort to any other person in violation of this section shall be guilty of a felony, if such other person has been convicted of, or was in custody upon the charge of a felony, and shall be punished as a Class I felon; and shall be guilty of a Class 1 misdemeanor, if such other person had been convicted of, or was in custody upon a charge of a misdemeanor, and shall be punished in the discretion of the court.

The provisions of this section shall not apply to members of the immediate family of such person. For the purposes of this section "immediate family" shall be defined to be the mother, father, brother, sister, ~~wife, husband~~ spouse, and child of said person.

CHAPTER 18B – REGULATION OF ALCOHOLIC BEVERAGES

§ 18B-700. Appointment and organization of local ABC boards.

(a) Membership. - A local ABC board shall consist of three or five members appointed for three-year terms unless the board is a board for a merged ABC system under G.S. 18B-703 and a different size membership has been provided for as part of the negotiated merger. If the board is a three-member board, one member of the initial board of a newly created ABC system shall be appointed for a three-year term, one member for a two-year term, and one member for a one-year term. If the board is a five-member board, one member of the initial board of a newly created ABC system shall be appointed for a three-year term, two members for two-year terms, and two members for one-year terms. As the terms of initial board members expire, their successors shall each be appointed for three-year terms. If a board is initially a three-member board and the appointing authority determines a five-member board is preferable, the terms of the two new members shall be for three years. If a local board has five members and the appointing authority determines a three-member board is preferable, the appointing authority shall not reduce the size of the board except upon the expiration of a member's term and only with the approval of the Commission. The appointing authority shall designate one member of the local board as chairman.

(a1) Mission. - The mission of local ABC boards and their employees shall be to serve their localities responsibly by controlling the sale of spirituous liquor and promoting customer-friendly, modern, and efficient stores.

(b) City Boards. - City ABC board members shall be appointed by the city governing body, unless a different method of appointment is provided in a local act enacted before the effective date of this Chapter.

(c) County Boards. - County ABC board members shall be appointed by the board of county commissioners, unless a different method of appointment is provided in a local act enacted before the effective date of this Chapter.

(d) Qualifications. - The appointing authority shall appoint members of a local board on the basis of the appointees' interest in public affairs, good judgment, knowledge, ability, and good moral character.

(e) Vacancy. - A vacancy on a local board shall be filled by the appointing authority for the remainder of the unexpired term. If the chairman's seat becomes vacant, the appointing authority may designate either the new member or an existing member of the local board to complete the chairman's term.

(f) Removal. - A member of a local board may be removed for cause at any time by the appointing authority. Local board members are subject to the removal provisions of G.S. 18B-202.

(g) Compensation of Board Members. - A local board member shall receive compensation in an amount not to exceed one hundred fifty dollars (\$150.00) per board meeting unless a different level of monetary compensation is approved by the appointing authority. If a different level is approved by the appointing authority, the appointing authority shall notify the Commission of the approved level of compensation in writing. Any change in compensation approved by the appointing authority shall be reported to the Commission in writing within 30 days of the effective date of the change. No local board member shall receive any nonmonetary compensation or benefits unless specifically authorized by this section.

(g1) Compensation of General Managers of Local Boards. - The salary authorized for the general manager, as defined in G.S. 18B-101, of a local board shall not exceed the salary authorized by the General Assembly for the clerk of superior court of the county in which the appointing authority was originally incorporated unless such compensation is otherwise approved by the appointing authority. The local board shall provide the appointing authority's written confirmation of such approval to the Commission. Any change in compensation approved by the appointing authority shall be reported to the Commission in writing within 30 days of the effective date of the change. The general manager of a local board may receive any other benefits to which all employees of the local board are entitled. The salary authorized for other employees of a local board may not exceed that of the general manager.

(g2) Travel Allowance and Per Diem Rates. - Approved travel on official business by the members and employees of local boards shall be reimbursed pursuant to G.S. 138-6 unless the local board adopts a travel policy that conforms to the travel policy of the appointing authority and such policy is approved by the appointing authority. The local board shall annually provide the appointing authority's written confirmation of such approval to the Commission and a copy of the travel policy authorized by the appointing authority. Any excess expenses not covered by the local board's travel policy shall only be paid with the written authorization of the appointing authority's finance officer. A copy of the written authorization for excess expenses shall be submitted to the Commission by the local board within 30 days of approval.

(h) Conflict of Interest. - The provisions of G.S. 18B-201 shall apply to local board members and employees.

(i) Bond. - Each local board member and the employees designated as the general manager and finance officer of the local board shall be bonded in an amount not less than fifty thousand dollars (\$50,000) secured by a corporate surety, for the faithful performance of his duties. A public employees' blanket position bond in the required amount satisfies the requirements of this subsection. The bond shall be payable to the local board and shall be approved by the appointing authority for the local board. The appointing authority may increase the amount of the bond required for any member or employee who handles board funds.

(j) Limited Liability. - A person serving as a member of a local ABC board shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of this service, except where the person:

- (1) Was not acting within the scope of his official duties;
- (2) Was not acting in good faith;
- (3) Committed gross negligence or willful or wanton misconduct that resulted in the damage or injury;
- (4) Derived an improper personal financial benefit from the transaction; or
- (5) Incurred the liability from the operation of a motor vehicle.

The immunity in this subsection is personal to the members of local ABC boards, and does not immunize the local ABC board for liability for the acts or omissions of the members of the local ABC board.

(k) Nepotism. - Members of an immediate family shall not be employed within the local board if such employment will result in one member of the immediate family supervising another member of the immediate family, or if one member of the immediate family will occupy a position which has influence over another member's employment, promotion, salary administration, or other related management or personnel considerations. This subsection applies to local board members and employees.

For the purpose of this subsection, the term "immediate family" includes ~~wife, husband~~ spouse, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, and granddaughter. Also included are the step-, half-, and in-law relationships. It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position which requires influence over the other's employment, promotion, salary administration, or other related management or personnel considerations.

(l) Local Acts. - Notwithstanding the provisions of any local act, this section applies to all local boards.

CHAPTER 23 – DEBTOR AND CREDITOR

§ 23-20. Duties of trustee; accounting; oath.

The trustee of the imprisoned debtor shall pay ~~his~~ the imprisoned debtor's debts pro rata. After paying such debts, the trustee shall apply the surplus, from time to time, to the support of the ~~wife~~ spouse and children of the imprisoned debtor, under the direction of the superior court. When the imprisoned debtor is lawfully discharged from ~~his~~ imprisonment, the trustee shall deliver to ~~him~~ the discharged debtor all the estate, real and personal, of such debtor, after retaining a sufficient sum to satisfy the expenses incurred in the execution of the trust and lawful commissions therefor. The trustee shall make ~~his~~ the trustee's returns and have ~~his~~ the trustee's accounts audited and settled by the clerk of the superior court of the county where the proceeding was had, in like manner as provided for personal representatives. Before proceeding to the discharge of ~~his~~ the trustee's duty, the trustee shall take and subscribe an oath, well and truly to execute ~~his~~ the trustee's trust according to ~~his~~ the trustee's best skill and understanding. The oath must be filed with the clerk of the superior court.

CHAPTER 28A – ADMINISTRATION OF DECEDENTS' ESTATES

§ 28A-15-6. Federal income tax refunds - joint returns.

Upon the determination by the United States Treasury Department of an overpayment of income tax by a married couple filing a joint federal income tax return, one of whom has died since the filing of such return or where a joint federal income tax return is filed on behalf of a ~~husband and wife~~ individuals married to each other, one of whom has died prior to the filing of the return, any refund of the tax by reason of such overpayment, if not in excess of five hundred dollars (\$500.00), shall be the sole and separate property of the surviving spouse. In the event that both spouses are dead at the time such overpayment is determined, such refund, if not in excess of five hundred dollars (\$500.00), shall be the sole and separate property of the estate of the spouse who died last and may be paid directly by the Treasury Department to the executor or administrator of such estate, or to the person entitled to the possession of the assets of a small estate pursuant to the provisions of Article 25 of this Chapter.

CHAPTER 35A – INCOMPETENCY AND GUARDIANSHIP

§ 35A-1307. Spouse of incompetent ~~husband or wife~~ individual entitled to special proceeding for sale of real property.

Every married ~~person~~ individual whose ~~husband or wife~~ spouse is adjudged incompetent and is confined in a mental hospital or other institution in this State, and who was living with the incompetent spouse at the time of commitment shall, if he or she be in needy circumstances, have the right to bring a special proceeding before the clerk to sell the real property of the incompetent spouse, or so much thereof as is deemed expedient, and have the proceeds applied for support: Provided, that said proceeding shall be approved by the judge of the superior court holding the courts of the superior court district or set of districts as defined in G.S. 7A-41.1 where the said property is situated. When the deed of the commissioner appointed by the court, conveying the lands belonging to the incompetent spouse is executed, probated, and registered, it conveys a good and indefeasible title to the purchaser.

§ 35A-1310. Where one spouse or both incompetent; special proceeding before clerk.

In all cases where ~~a husband and wife~~ individuals married to each other shall be seized of property as an estate by the entirety, and ~~the wife or the husband~~ either spouse or both spouses shall be or become mentally incompetent to execute a conveyance of the estate so held, and the interest of said parties shall make it necessary or desirable that such property be mortgaged or sold, it shall be lawful for the mentally competent spouse and/or the guardian of the mentally incompetent spouse, and/or the guardians of both (where both are mentally incompetent) to file a petition with the clerk of the superior court in the county where the lands are located, setting forth all facts relative to the status of the owners, and showing the necessity or desirability of the sale or mortgage of said property, and the clerk, after first finding as a fact that either ~~the husband or wife~~ one spouse, or both, are mentally incompetent, shall have power to authorize the interested parties and/or their guardians to execute a mortgage, deed of trust, deed, or other conveyance of such property, provided it shall appear to said clerk's satisfaction that same is necessary or to the best advantage of the parties, and not prejudicial to the interest of the mentally incompetent spouse. All petitions filed under the authority of this section shall be filed in the office of the clerk of the superior court of the county where the real estate or any part of same is situated.

§ 35A-1312. Proceeding valid in passing title.

Any mortgage, deed, or deed of trust executed under authority of this Article by a regularly conducted special proceeding as provided shall have the force and effect of passing title to said property to the same extent as a deed executed jointly by ~~husband and wife~~ individuals married to each other, where both are mentally capable of executing a conveyance.

CHAPTER 39 - CONVEYANCES
Article 2 – Spousal Conveyances by ~~Husband and Wife~~.

§ 39-7. Instruments affecting married ~~person's~~ individual's title; joinder of spouse; exceptions.

(a) In order to waive the elective life estate of ~~either husband or wife~~ a spouse as provided for in G.S. 29-30, every conveyance or other instrument affecting the estate, right or title of any married ~~person~~ individual in lands, tenements or hereditaments must be executed by such ~~husband or wife~~ spouse, and due proof or acknowledgment thereof must be made and certified as provided by law.

(b) A married ~~person~~ individual may bargain, sell, lease, mortgage, transfer and convey any of his or her separate real estate without joinder or other waiver by his or her spouse if such spouse is incompetent and a guardian or trustee has been appointed as provided by the laws of North Carolina, and if the appropriate instrument is executed by the married ~~person~~ individual and the guardian or trustee of the incompetent spouse and is probated and registered in accordance with law, it shall convey all the estate and interest as therein intended of the married ~~person~~ individual in the land conveyed, free and exempt from the elective life estate as provided in G.S. 29-30 and all other interests of the incompetent spouse.

(c) Subsection (a) shall not be construed to require the spouse's joinder or other waiver of the elective life estate of such spouse as provided for in G.S. 29-30 where a different provision is made or provided for in the General Statutes including, but not limited to, G.S. 39-13, 39-13.3, 39-13.4, 31A-1(d), and 52-10.

§ 39-8. Acknowledgment at different times and places; before different officers; order immaterial.

In all cases of deeds, or other instruments executed by ~~husband and wife~~ individuals married to each other and requiring registration, the probate of such instruments as to ~~the husband one spouse~~ and due proof or acknowledgment of the ~~wife~~ other spouse may be taken before different officers authorized by law to taken probate of deeds, and at different times and places, whether both of said officials reside in this State or only one in this State and the other in another state or country. And in taking the probate of such instruments executed by ~~husband and wife~~ individuals married to each other, it is immaterial whether the execution of the instrument was proven as to or acknowledged by ~~the husband~~ one spouse before or after due proof as to or acknowledgment of the ~~wife~~ other spouse.

§ 39-9. Absence of ~~wife's~~ one spouse's acknowledgment does not affect deed as to ~~husband~~ other spouse.

When an instrument purports to be signed by a ~~husband and wife~~ individuals married to each other, the instrument may be ordered registered, if the acknowledgment of ~~the husband~~ one spouse is duly taken, but no such instrument shall be the act or deed of ~~the wife~~ the other spouse unless proven or acknowledged by him or her according to law.

§ 39-13.2. Married ~~persons~~ individuals under 18 made competent as to certain transactions; certain transactions validated.

(a) Any married ~~person~~ individual under 18 years of age is authorized and empowered and shall have the same privileges as are conferred upon married ~~persons~~ individuals 18 years of age or older to:

- (1) Waive, release or renounce by deed or other written instrument any right or interest which he or she may have in the real or personal property (tangible or intangible) of the other spouse; or
- (2) Jointly execute with his or her spouse, if such spouse is 18 years of age or older, any note, contract of insurance, deed, deed of trust, mortgage, lien of whatever nature or other instrument with respect to real or personal property (tangible or intangible) held with such other spouse either as tenants by the entirety, joint tenants, tenants in common, or in any other manner.

(b) Any transaction between a ~~husband and wife~~ individuals married to each other pursuant to this section shall be subject to the provisions of G.S. 52-10 or 52-10.1 whenever applicable.

(c) No renunciation of dower or curtesy or of rights under G.S. 29-30(a) by a married ~~person~~ individual under the age of 21 years after June 30, 1960, and until April 7, 1961, shall be invalid because such ~~person~~ individual was under such age. No written assent by a husband under the age of 21 years to a conveyance of the real property of his wife after June 30, 1960, and until April 7, 1961, shall be invalid because such husband was under such age.

§ 39-13.4. Conveyances by ~~husband or wife~~ a spouse under deed of separation.

Any conveyance of real property, or any interest therein, by ~~the husband or wife~~ a spouse who ~~have~~ previously executed with his or her spouse a valid and lawful deed of separation which authorizes ~~said husband or wife~~ the conveying spouse to convey real property or any interest therein without the consent and joinder of the other and which deed of separation or a memorandum of the deed of separation setting forth such authorization is recorded in the county where the land lies, shall be valid to pass such title as the conveying spouse may have to his or her grantee and shall pass such title free and clear of all rights in such property and free and clear of such interest in property that the other spouse might acquire solely as a result of the marriage,

including any rights arising under G.S. 29-30, unless an instrument in writing canceling the deed of separation or memorandum thereof and properly executed and acknowledged by ~~said husband and wife~~ both spouses is recorded in the office of said register of deeds. The instrument which is registered under this section to authorize the conveyance of an interest in real property or the cancellation of the deed of separation or memorandum thereof shall comply with the provisions of G.S. 52-10 or 52-10.1.

All conveyances of any interest in real property by a spouse who had previously executed a valid and lawful deed of separation, ~~or~~ separation agreement, or property settlement, which authorized the parties thereto to convey real property or any interest therein without the consent and joinder of the other, when said deed of separation, separation agreement, or property settlement, or a memorandum of the deed of separation, separation agreement, or property settlement, setting forth such authorization, had been previously recorded in the county where the property is located, and when such conveyances were executed before October 1, 1981, shall be valid to pass such title as the conveying spouse may have to his or her grantee, and shall pass such to ~~him~~ the grantee free and clear of rights in such property and free and clear of such interest in such property that the other spouse might acquire solely as a result of the marriage, including any rights arising under G.S. 29-30, unless an instrument in writing canceling the deed of separation, separation agreement, ~~or~~ property settlement, or memorandum thereof, properly executed and acknowledged by ~~said husband and wife~~ both spouses, is recorded in the office of said register of deeds. The instrument which is registered under this section to authorize the conveyance of an interest in real property or the cancellation of the deed of separation, separation agreement, property settlement, or memorandum thereof shall comply with G.S. 52-10 or 52-10.1.

§ 39-13.5. Creation of tenancy by entirety in partition of real property.

When ~~either a husband or a wife~~ a married individual owns an undivided interest in real property as a tenant in common with some person or persons other than his or her spouse and there occurs an actual partition of the property, a tenancy by the entirety may be created in the ~~husband or wife~~ married individual who owned the undivided interest and his or her spouse in the manner hereinafter provided:

- (1) In a division by cross-deed or deeds, between or among the tenants in common provided that the intent of the tenant in common to create a tenancy by the entirety with his or her spouse in this exchange of deeds must be clearly stated in the granting clause of the deed or deeds to such tenant and his or her spouse, and further provided that the deed or deeds to such tenant in common and his or her spouse is signed by such tenant in common and is acknowledged before a certifying officer in accordance with G.S. 52-10;
- (2) In a judicial proceeding for partition. In such proceeding, both spouses have the right to become parties to the proceeding and to have their pleadings state that the intent of the tenant in common is to create a tenancy by the entirety with his or her spouse. The order of partition shall provide that the real

property assigned to such tenant and his or her spouse shall be owned by them as tenants by the entirety.

CHAPTER 41- ESTATES

§ 41-10. Titles quieted.

An action may be brought by any person against another who claims an estate or interest in real property adverse to ~~him~~ the person who brought the action for the purpose of determining such adverse claims; and by any man or woman against his or her ~~wife or husband~~ spouse or alleged ~~wife or husband~~ spouse who have not lived together as ~~man and wife~~ a married couple within the two years preceding, and who at the death of such plaintiff might have or claim to have an interest in his or her estate, and a decree for the plaintiff shall debar all claims of the defendant in the property of the plaintiff then owned or afterwards acquired: Provided, that no such relief shall be granted against such ~~husband or wife~~ spouse or alleged ~~wife or husband~~ spouse, except in case the summons in said action is personally served on such defendant.

If the defendant in such action disclaim in his or her answer any interest or estate in the property, or suffer judgment to be taken against him or her without answer, the plaintiff cannot recover costs. In any case in which judgment has been or shall be docketed, whether such judgment is in favor of or against the person bringing such action, or is claimed by him or her, or affects real estate claimed by him or her, or whether such judgment is in favor of or against the person against whom such action may be brought, or is claimed by him or her, or affects real estate claimed by him or her, the lien of said judgment shall be such claim of an estate or interest in real estate as is contemplated by this section.

CHAPTER 43 – LAND REGISTRATION

§ 43-36. When land conveyed as security.

(a) Whole Land Conveyed. – Whenever the owner of any registered estate shall desire to convey same as security for debt, it may be done in the following manner, by a short form of transfer, substantially as follows, to wit:

A.B. and ~~wife~~ spouse (giving names of all owners or holders of certificates and their ~~wives~~ respective spouses) hereby transfer to C.D. the tract or lot of land described as No. _____ in registration of titles book for _____ County, a certificate for the title for same being hereto attached, to secure a debt of _____ dollars, due to _____, of _____ County and State, on the _____ day of _____, _____, evidenced by bond (or otherwise as the case may be) dated the _____ day of _____, _____. In case of default in payment of said debt with accrued interest, _____ days notice of sale required.

The same shall be signed and properly acknowledged by the parties making same, and shall be presented, together with the owner's certificate, to the register of deeds, whose duty it shall be

to note upon the owner's certificate and upon the certificate of title in the consolidated real property records the name of the trustee, the amount of debt, and the date of maturity of same.

(b) Part of Land Conveyed. – When a part of the registered estate shall be so conveyed, the register of deeds shall note upon the consolidated real property records and owner's certificate the part so conveyed, and if the same be required and the proper fee paid by the trustee, shall issue what shall be known as a partial certificate, over his or her hand and seal, setting out the portion so conveyed.

(c) Effect of Transfer. – All transfers by such short form shall convey the power of sale upon due advertisement at the county courthouse and in some newspaper published in the county, or adjoining county, in the same manner and as fully as is now provided by law in the case of mortgages and deeds of trust and default therein.

(d) Other Encumbrances Noted. – All registered encumbrances, rights or adverse claims affecting the estate represented thereby shall continue to be noted, not only upon the certificate of title in the consolidated real property records, but also upon the owner's certificate, until same shall have been released or discharged. And in the event of second or other subsequent voluntary encumbrances the holder of the certificate may be required to produce such certificate for the entry thereon or attachment thereto of the note of such subsequent charge or encumbrance as provided in this Article.

(e) Other Forms of Conveyance May Be Used. – Nothing in this section nor this Chapter shall be construed to prevent the owner from conveying such land, or any part of the same, as security for a debt by deed of trust or mortgage in any form which may be agreed upon between the parties thereto, and having such deed of trust or mortgage recorded in the office of the register of deeds as other deeds of trust and mortgages are recorded: Provided, that the book and page of the record at which such deed of trust or mortgage is recorded shall be entered by the register of deeds upon the owner's certificate and also on the consolidated real property records.

(f) Sale under Lien; New Certification. – Upon foreclosure of such deed of trust or mortgage, or sale under execution for taxes or other lien on the land, the fact of such foreclosure or sale shall be reported by the trustee, mortgagee or other person authorized to make the same, to the register of deeds of the county in which the land lies, and, upon satisfactory evidence thereof, it shall be his or her duty to call in and cancel the outstanding certificate of title for the land, so sold, and to issue a new certificate in its place to the purchaser or other person entitled thereto; and the production of such outstanding certificate and its surrender by the holder thereof may be compelled, upon notice to him or her, by motion before and order of the clerk of the superior court in the original proceeding or the clerk of the superior court of the county in which the land lies; but the right of appeal from such order may be exercised and shall be allowed as in other special proceedings, and pending any such appeal the rights of all parties shall be preserved.

CHAPTER 47 – PROBATE AND REGISTRATION

§ 47-25. Marriage settlements.

All marriage settlements and other marriage contracts, whereby any money or other estate is secured to ~~the wife or husband~~ either spouse shall be proved or acknowledged and registered in the same manner as deeds for lands, and shall be valid against creditors and purchasers for value only from registration.

§ 47-40. ~~Husband's acknowledgment and wife's acknowledgment~~ Acknowledgment by both spouses before the same officer.

Where the instrument is acknowledged by ~~both husband and wife~~ individuals married to each other or by other grantor before the same officer the form of acknowledgment shall be in substance as follows:

I (here give name of official and his official title), do hereby certify that (here give names of the grantors whose acknowledgment is being taken) personally appeared before me this day and acknowledged the due execution of the foregoing (or annexed) instrument.

CHAPTER 50A – UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT AND UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT

§ 50A-310. Hearing and order.

(a) Unless the court issues a temporary emergency order pursuant to G.S. 50A-204 upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

- (1) The child-custody determination has not been registered and confirmed under G.S. 50A-305 and that:
 - a. The issuing court did not have jurisdiction under Part 2;
 - b. The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2; or
 - c. The respondent was entitled to notice, but notice was not given in accordance with the standards of G.S. 50A-108 in the proceedings before the court that issued the order for which enforcement is sought; or

- (2) The child-custody determination for which enforcement is sought was registered and confirmed under G.S. 50A-305 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2.

(b) The court shall award the fees, costs, and expenses authorized under G.S. 50A-312 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the marital relationship of husband and wife or parent and child relationship may not be invoked in a proceeding under this Part.

CHAPTER 52 – POWERS AND LIABILITIES OF MARRIED PERSONS

§ 52-5. Inter-spousal torts. ~~Torts between husband and wife.~~

~~A husband and wife~~ Individuals married to each other have a cause of action against each other to recover damages sustained to their person or property as if they were unmarried.

§ 52-5.1. Inter-spousal tort actions ~~Tort actions between husband and wife~~ arising out of acts occurring outside State.

~~A husband and wife~~ Individuals married to each other shall have a cause of action against each other to recover damages for personal injury, property damage or wrongful death arising out of acts occurring outside of North Carolina, and such action may be brought in this State when both were domiciled in North Carolina at the time of such acts.

§ 52-10. Contracts between ~~husband and wife~~ spouses generally; releases.

(a) Contracts between ~~husband and wife~~ individuals married to each other not inconsistent with public policy are valid, and any ~~persons~~ individuals of full age about to be married and married ~~persons~~ individuals may, with or without a valuable consideration, release and quitclaim such rights which they might respectively acquire or may have acquired by marriage in the property of each other; and such releases may be pleaded in bar of any action or proceeding for the recovery of the rights and estate so released. No contract or release between ~~husband and wife~~ individuals married to each other made during their coverture shall be valid to affect or change any part of the real estate of either spouse, or the accruing income thereof for a longer time than three years next ensuing the making of such contract or release, unless it is in writing and is acknowledged by both parties before a certifying officer.

(a1) A contract between ~~a husband and wife~~ individuals married to each other made, with or without a valuable consideration, during a period of separation to waive, release, or establish rights and obligations to post separation support, alimony, or spousal support is valid and not inconsistent with public policy. A provision waiving, releasing, or establishing rights and obligations to post separation support, alimony, or spousal support shall remain valid following a period of reconciliation and subsequent separation, if the contract satisfies all of the following requirements:

- (1) The contract is in writing.
- (2) The provision waiving the rights or obligations is clearly stated in the contract.
- (3) The contract was acknowledged by both parties before a certifying officer.

A release made pursuant to this subsection may be pleaded in bar of any action or proceeding for the recovery of the rights released.

(b) Such certifying officer shall be a notary public, or a justice, judge, magistrate, clerk, assistant clerk or deputy clerk of the General Court of Justice, or the equivalent or corresponding officers of the state, territory or foreign country where the acknowledgment is made. Such officer must not be a party to the contract.

(c) This section shall not apply to any judgment of the superior court or other State court of competent jurisdiction, which, by reason of its being consented to by ~~a husband and wife~~ individuals married to each other, or their attorneys, may be construed to constitute a contract or release between such ~~husband and wife~~ individuals who are married to each other.

§ 52-10.1. Separation agreements.

Any married couple is hereby authorized to execute a separation agreement not inconsistent with public policy which shall be legal, valid, and binding in all respects; provided, that the separation agreement must be in writing and acknowledged by both parties before a certifying officer as defined in G.S. 52-10(b). Such certifying officer must not be a party to the contract. This section shall not apply to any judgment of the superior court or other State court of competent jurisdiction, which, by reason of its being consented to by ~~a husband and wife~~ individuals married to each other, or their attorneys, may be construed to constitute a separation agreement between such ~~husband and wife~~ individuals who are married to each other.

CHAPTER 58 - INSURANCE

§ 58-40-10. Other definitions.

As used in this Article and in Articles 36 and 37 of this Chapter:

(1) "Private passenger motor vehicle" means:

- a. A motor vehicle of the private passenger or station wagon type that is owned or hired under a long-term contract by the policy named insured and that is neither used as a public or livery conveyance for passengers nor rented to others without a driver; or
- b. A motor vehicle that is a pickup truck or van that is owned by ~~an individual or by husband and wife or individuals~~ an individual, by individuals married to each other, or by individuals who are residents of the same household if it:
 1. Has a gross vehicle weight as specified by the manufacturer of less than 14,000 pounds; and
 2. Is not used for the delivery or transportation of goods or materials unless such use is (i) incidental to the insured's business of installing, maintaining, or repairing furnishings or equipment, or (ii) for farming or ranching. Such vehicles owned by a family farm copartnership or a family farm corporation shall be considered owned by an individual for the purposes of this section; or
- c. A motorcycle, motorized scooter or other similar motorized vehicle not used for commercial purposes. A moped, as defined in G.S. 105-164.3, is not considered a motorcycle, motorized scooter, or other similar motorized vehicle.

(2) "Nonfleet" motor vehicle means a motor vehicle not eligible for classification as a fleet vehicle for the reason that the motor vehicle is one of four or fewer motor vehicles hired under a long-term contract or owned by the insured named in the policy.

§ 58-44-45. Policy issued to ~~husband or wife~~ one spouse on joint property.

Any policy of fire insurance issued to ~~husband or wife~~ one spouse, on buildings and household furniture owned by ~~the husband and wife~~ that spouse and his or her spouse, either by entirety, in common, or jointly, either name of one of the parties in interest named as the insured or beneficiary therein, shall be sufficient and the policy shall not be void for failure to disclose the interest of the other, unless it appears that in the procuring of the issuance of such policy, fraudulent means or methods were used by the insured or owner thereof.

§ 58-51-5. Form of policy.

(a) No policy of accident and health insurance shall be delivered or issued for delivery to any person in this State unless:

- (1) The entire money and other considerations therefor are expressed therein; and
- (2) The time at which the insurance takes effect and terminates is expressed therein; and
- (3) It purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including ~~husband, wife~~ individuals married to each other, dependent children or any children under a specified age which shall not exceed 19 years and any other persons dependent upon the policyholder; and
- (4) The style, arrangement, and overall appearance of the policy, any endorsements, or attached papers give no undue prominence to any portion of the text. For the purpose of this subdivision, "text" includes all printed matter except the name and address of the insurer, the name or title of the policy, and captions and subcaptions.
- (5) The exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in G.S. 58-51-15, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "EXCEPTIONS," or "EXCEPTIONS AND REDUCTIONS," provided that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies; and
- (6) Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and
- (7) It contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the Commissioner.
- (8) It contains no provision excluding from coverage claims that are subject to the Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, unless the exclusion extends to only specific medical charges for which the employee, employer, or carrier is liable or responsible according to a final

adjudication of the claim under that Article or an order of the North Carolina Industrial Commission approving a settlement agreement entered into under that Article.

(b) If any policy is issued by an insurer domiciled in this State for delivery to a person residing in another state, and if the official having responsibility for the administration of the insurance laws of such other state shall have advised the Commissioner that any such policy is not subject to approval or disapproval by such official, the Commissioner may by ruling require that such policy meet the standards set forth in subsection (a) of this section and in G.S. 58-51-15.

§ 58-51-80. Group accident and health insurance defined.

(a) Any policy or contract of insurance against death or injury resulting from accident or from accidental means which covers more than one person except blanket accident policies as defined in G.S. 58-51-75, shall be deemed a group accident insurance policy. Any policy or contract which insures against disablement, disease or sickness of the insured (excluding disablement which results from accident or from accidental means) and which covers more than one person, except blanket health insurance policies as defined in G.S. 58-51-75, shall be deemed a group health insurance policy or contract. Any policy or contract of insurance which combines the coverage of group accident insurance and of group health insurance shall be deemed a group accident and health insurance policy. No policy or contract of group accident, group health or group accident and health insurance, and no certificates thereunder, shall be delivered or issued for delivery in this State unless it conforms to the requirements of subsection (b).

(b) No policy or contract of group accident, group health or group accident and health insurance shall be delivered or issued for delivery in this State unless the group of persons thereby insured conforms to the requirements of the following subdivisions:

- (1) Under a policy issued to an employer, principal, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, or by a principal or two or more principals in the same industry or kind of business, which employer, principal, or trustee shall be deemed the policyholder, covering, except as hereinafter provided, only employees, or agents, of any class or classes thereof determined by conditions pertaining to employment, or agency, for amounts of insurance based upon some plan which will preclude individual selection. The premium may be paid by the employer, by the employer and the employees jointly, or by the employee; and where the relationship of principal and agent exists, the premium may be paid by the principal, by the principal and agents, jointly, or by the agents. If the premium is paid by the employer and the employees jointly, or by the principal and agents jointly, or by the employees, or by the agents, the group shall be structured on an actuarially sound basis.

- (1a) Under a policy issued to an association or to a trust or to the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. The association or associations shall have at the outset a minimum of 500 persons and shall have been organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least five years; and shall have a constitution and bylaws that provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members; (ii) except for credit unions, the association or associations collect dues or solicit contributions from members; and (iii) the members, other than associate members, have voting privileges and representation on the governing board and committees. The policy is subject to the following requirements:
- a. The policy may insure members of the association or associations, employees of the association or associations, or employees of members, or one or more of the preceding or all of any class or classes for the benefit of persons other than the employee's employer.
 - b. The premium for the policy shall be paid from funds contributed by the association or associations, or by employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the association, associations, or employer members. The premium rates for each association policy shall be developed, and applied to the certificates thereunder, on an actuarially sound basis.
 - c. Repealed by Session Laws 1997-259, s. 8.
- (1b) Under a policy issued to a creditor as defined in G.S. 58-57-5 who shall be deemed the policyholder, to insure debtors as defined in G.S. 58-57-5 of the creditor to provide indemnity for payments becoming due on a specific loan or other credit transaction as defined in G.S. 58-51-100, with or without insurance against death by accident, subject to the following requirements:
- a. The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise.

- b. The premium for the policy shall be paid from the creditor's funds, from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors or identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless the group is structured on an actuarially sound basis. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.
- c. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly, or may reasonably be expected to receive at least 100 new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five percent (75%) of the new entrants become insured.
- d. Premiums for this coverage shall be actuarially equivalent to the rates authorized under Article 57 of Chapter 58 of the General Statutes for credit accident and health insurance.

(2), (3) Repealed by Session Laws 1997-259, s. 8.

(c) The term "employees" as used in this section shall be deemed to include, for the purposes of insurance hereunder, employees of a single employer, the officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. With the exception of disability income insurance, employees shall be added to the group coverage no later than 90 days after their first day of employment. Employment shall be considered continuous and not be considered broken except for unexcused absences from work for reasons other than illness or injury. The term "employee" is defined as a nonseasonal person who works on a full-time basis, with a normal work week of 30 or more hours and who is otherwise eligible for coverage, but does not include a person who works on a part-time, temporary, or substitute basis. The term "employer" as used herein may be deemed to include the State of North Carolina, any county, municipality or corporation, or the proper officers, as such, of any unincorporated municipality or any department or subdivision of the State, county, such corporation, or municipality determined by conditions pertaining to the employment. When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees.

(d) The term "agents" as used in this section shall be deemed to include, for the purposes of insurance hereunder, agents of a single principal who are under contract to devote all, or substantially all, of their time in rendering personal services for such principal, for a commission or other fixed or ascertainable compensation.

(e) The benefits payable under any policy or contract of group accident, group health and group accident and health insurance shall be payable to the employees, or agents, or to some beneficiary or beneficiaries designated by the employee or agent, other than the employer or principal, but if there is no designated beneficiary as to all or any part of the insurance at the death of the employee or agent, then the amount of insurance payable for which there is no designated beneficiary shall be payable to the estate of the employee or agent, except that the insurer may in such case, at its option, pay such insurance to any one or more of the following surviving relatives of the employee or agent: ~~wife, husband~~ spouse, mother, father, child, or children, brothers or sisters; and except that payment of benefits for expenses incurred on account of hospitalization or medical or surgical aid, as provided in subsection (f), may be made by the insurer to the hospital or other person or persons furnishing such aid. Payment so made shall discharge the insurer's obligation with respect to the amount of insurance so paid.

(f) Any policy or contract of group accident, group health or group accident and health insurance may include provisions for the payment by the insurer of benefits to the employee or agent of the insured group, on account of hospitalization or medical or surgical aid for himself or herself, his or her spouse, his or her child or children, or other persons chiefly dependent upon him or her for support and maintenance.

(g) Any policy or contract of group accident, group health or group accident and health insurance may provide for readjustment of the rate of premium based on the experience thereunder at the end of the first year, or at any time during any subsequent year based upon at least 12 months of experience: Provided that any such readjustment after the first year shall not be made any more frequently than once every six months. Any rate adjustment must be preceded by a 45-day notice to the contract holder before the effective date of any rate increase or any policy benefit revision. A notice of nonrenewal shall be given to the contract holder 45 days prior to termination. Any refund under any plan for readjustment of the rate of premium based on the experience under group policies and any dividend paid under the policies may be used to reduce the employer's or principal's contribution to group insurance for the employees of the employer, or the agents of the principal, and the excess over the contribution by the employer, or principal, shall be applied by the employer, or principal, for the sole benefit of the employees or agents.

CHAPTER 97 – WORKERS' COMPENSATION ACT

§ 97-2. Definitions.

When used in this Article, unless the context otherwise requires:

- (1) Employment. - The term "employment" includes employment by the State and all political subdivisions thereof, and all public and quasi-public corporations therein and all private employments in which three or more employees are regularly employed in the same business or establishment or in which one or more employees are employed in activities which involve the use or presence of radiation, except agriculture and domestic services, unless 10 or more full-time nonseasonal agricultural workers are regularly employed by the employer and an individual sawmill and logging operator with less than 10 employees, who saws and logs less than 60 days in any six consecutive months and whose principal business is unrelated to sawmilling or logging.
- (2) Employee. - The term "employee" means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer, and as relating to those so employed by the State, the term "employee" shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term "employee" shall include all officers and employees thereof, including such as are elected by the people. The term "employee" shall include members of the North Carolina National Guard while on State active duty under orders of the Governor and members of the North Carolina State Defense Militia while on State active duty under orders of the Governor. The term "employee" shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also the employee's legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee, as herein defined, of a municipality, county, or of the State of North Carolina, while engaged in the discharge of the employee's official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of their employer.

Except as otherwise provided herein, every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation's specifically excluding such executive officer in such contract of insurance, and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

All county agricultural extension service employees who do not receive official federal appointments as employees of the United States Department of Agriculture and who are field faculty members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University, and the boards of county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board of commissioners in the county in which the employee is employed for purposes of workers' compensation.

The term "employee" shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-1031(a) when performing duties in the course and scope of a State-approved mission pursuant to Subpart C of Part 5 of Article 13 of Chapter 143B of the General Statutes.

"Employee" shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

"Employee" shall not include any person elected or appointed and empowered as an executive officer, director, or committee member under the charter, articles, or bylaws of a nonprofit corporation subject to Chapter 47A, 47C, 47F, 55A, or 59B of the General Statutes, or any organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, who performs only voluntary service for the nonprofit corporation, provided that the person receives no remuneration for the voluntary service other than reasonable reimbursement for expenses incurred in connection with the voluntary service. When a nonprofit corporation as described herein employs one or more persons who do receive remuneration other than

reasonable reimbursement for expenses, then any volunteer officers, directors, or committee members excluded from the definition of "employee" by operation of this paragraph shall be counted as employees for the sole purpose of determining the number of persons regularly employed in the same business or establishment pursuant to G.S. 97-2(1). Other than for the limited purpose of determining the number of persons regularly employed in the same business or establishment, such volunteer nonprofit officers, directors, or committee members shall not be "employees" under the Act. Nothing herein shall prohibit a nonprofit corporation as described herein from voluntarily electing to provide for workers' compensation benefits in the manner provided in G.S. 97-93 for volunteer officers, directors, or committee members excluded from the definition of "employee" by operation of this paragraph. This paragraph shall not apply to any volunteer firefighter, volunteer member of an organized rescue squad, an authorized pickup firefighter when that individual is engaged in emergency fire suppression activities for the North Carolina Forest Service, a duly appointed and sworn member of an auxiliary police department organized pursuant to G.S. 160A-282, or a senior member of the State Civil Air Patrol functioning under Subpart C of Part 5 of Article 13 of Chapter 143B of the General Statutes, even if such person is elected or appointed and empowered as an executive officer, director, or committee member under the charter, articles, or bylaws of a nonprofit corporation as described herein.

Any sole proprietor or partner of a business or any member of a limited liability company may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article.

"Employee" shall include an authorized pickup firefighter of the North Carolina Forest Service of the Department of Agriculture and Consumer Services when that individual is engaged in emergency fire suppression activities for the North Carolina Forest Service. As used in this section, "authorized pickup firefighter" means an individual who has completed required fire suppression training as a wildland firefighter and who is available as needed by the North Carolina Forest Service for emergency fire suppression activities, including immediate dispatch to wildfires and standby for initial attack on fires during periods of high fire danger.

It shall be a rebuttable presumption that the term "employee" shall not include any person performing services in the sale of newspapers or magazines to ultimate consumers under an arrangement whereby the newspapers or magazines are to be sold by that person at a fixed price and the person's compensation is based on the retention of the excess of the fixed

price over the amount at which the newspapers or magazines are charged to the person.

- (3) Employer. - The term "employer" means the State and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustee of any person. The board of commissioners of each county of the State, for the purposes of this law, shall be considered as "employer" of all deputy sheriffs serving within such county, or persons serving or performing the duties of a deputy sheriff, whether such persons are appointed by the sheriff or by the board of commissioners and whether serving on a fee basis or salary basis. Each county is authorized to insure its compensation liability for deputy sheriffs to the same extent it is authorized to insure other compensation liability for employees thereof. For purposes of this Chapter, when an authorized pickup firefighter of the North Carolina Forest Service of the Department of Agriculture and Consumer Services is engaged in emergency fire suppression activities for the North Carolina Forest Service, that individual's employer is the North Carolina Forest Service.
- (4) Person. - The term "person" means individual, partnership, association or corporation.
- (5) Average Weekly Wages. - "Average weekly wages" shall mean the earnings of the injured employee in the employment in which the employee was working at the time of the injury during the period of 52 weeks immediately preceding the date of the injury, including the subsistence allowance paid to veteran trainees by the United States government, provided the amount of said allowance shall be reported monthly by said trainee to the trainee's employer, divided by 52; but if the injured employee lost more than seven consecutive calendar days at one or more times during such period, although not in the same week, then the earnings for the remainder of such 52 weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of fewer than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed; provided, results fair and just to both parties will be thereby obtained. Where, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impractical to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the 52 weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

But where for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

Wherever allowances of any character made to an employee in lieu of wages are specified part of the wage contract, they shall be deemed a part of his earnings.

Where a minor employee, under the age of 18 years, sustains a permanent disability or dies leaving dependents surviving, the compensation payable for permanent disability or death shall be calculated, first, upon the average weekly wage paid to adult employees employed by the same employer at the time of the accident in a similar or like class of work which the injured minor employee would probably have been promoted to if not injured, or, second, upon a wage sufficient to yield the maximum weekly compensation benefit. Compensation for temporary total disability or for the death of a minor without dependents shall be computed upon the average weekly wage at the time of the accident, unless the total disability extends more than 52 weeks, and then the compensation may be increased in proportion to the employee's expected earnings.

In case of disabling injury or death to a volunteer firefighter; volunteer member of an organized rescue squad; an authorized pickup firefighter, as defined in subdivision (2) of this section, when that individual is engaged in emergency fire suppression activities for the North Carolina Forest Service; a duly appointed and sworn member of an auxiliary police department organized pursuant to G.S. 160A-282; or senior members of the State Civil Air Patrol functioning under Subpart C of Part 5 of Article 13 of Chapter 143B of the General Statutes, under compensable circumstances, compensation payable shall be calculated upon the average weekly wage the volunteer firefighter, volunteer member of an organized rescue squad, authorized pickup firefighter of the North Carolina Forest Service; when that individual is engaged in emergency fire suppression activities for the North Carolina Forest Service, member of an auxiliary police department, or senior member of the State Civil Air Patrol was earning in the employment wherein he principally earned his livelihood as of the date of injury. Provided, however, that the minimum compensation payable to a volunteer firefighter, volunteer member of an organized rescue squad, an authorized pickup firefighter of the North Carolina Forest Service of the Department of Agriculture and Consumer Services, when that individual is engaged in emergency fire suppression activities for the North Carolina Forest Service, a sworn member of an auxiliary police department organized pursuant to G.S. 160A-282, or senior members of the State Civil Air Patrol shall be sixty-six and two-thirds percent (66 2/3%) of the maximum weekly benefit established in G.S. 97-29.

- (6) Injury. - "Injury and personal injury" shall mean only injury by accident arising out of and in the course of the employment, and shall not include a disease in any form, except where it results naturally and unavoidably from the accident. With respect to back injuries, however, where injury to the back arises out of and in the course of the employment and is the direct result of a specific traumatic incident of the work assigned, "injury by accident" shall be construed to include any disabling physical injury to the back arising out of and causally related to such incident. Injury shall include breakage or damage to eyeglasses, hearing aids, dentures, or other prosthetic devices which function as part of the body; provided, however, that eyeglasses and hearing aids will not be replaced, repaired, or otherwise compensated for unless injury to them is incidental to a compensable injury.
- (7) Carrier. - The term "carrier" or "insurer" means any person or fund authorized under G.S. 97-93 to insure under this Article, and includes self-insurers.
- (8) Commission. - The term "Commission" means the North Carolina Industrial Commission, to be created under the provisions of this Article.
- (9) Disability. - The term "disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.
- (10) Death. - The term "death" as a basis for a right to compensation means only death resulting from an injury.
- (11) Compensation. - The term "compensation" means the money allowance payable to an employee or to his dependents as provided for in this Article, and includes funeral benefits provided herein.
- (12) Child, Grandchild, Brother, Sister. - The term "child" shall include a posthumous child, a child legally adopted prior to the injury of the employee, and a stepchild or acknowledged child born out of wedlock dependent upon the deceased, but does not include married children unless wholly dependent upon him. "Grandchild" means a child, as defined in this subdivision, of a child, as defined in this subdivision. "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. "Child," "grandchild," "brother," and "sister" include only persons who at the time of the death of the deceased employee are under 18 years of age.
- (13) Parent. - The term "parent" includes stepparents and parents by adoption, parents-in-law, and any person who for more than three years prior to the

death of the deceased employee stood in the place of a parent to him, if dependent on the injured employee.

- (14) Widow. - The term "widow" includes only the decedent's ~~wife~~ female spouse living with or dependent for support upon ~~him~~ the decedent at the time of ~~his~~ the decedent's death; or living apart for justifiable cause or by reason of ~~his~~ the decedent's desertion at such time.
- (15) Widower. - The term "widower" includes only the decedent's ~~husband~~ male spouse living with or dependent for support upon ~~her~~ the decedent at the time of ~~her~~ the decedent's death or living apart for justifiable cause or by reason of ~~her~~ the decedent's desertion at such time.
- (16) Adoption. - The term "adoption" or "adopted" means legal adoption prior to the time of the injury.
- (17) Singular. - The singular includes the plural and the masculine includes the feminine and neuter.
- (18) Hernia. - In all claims for compensation for hernia or rupture, resulting from injury by accident arising out of and in the course of the employee's employment, it must be definitely proven to the satisfaction of the Industrial Commission:
 - a. That there was an injury resulting in hernia or rupture.
 - b. That the hernia or rupture appeared suddenly.
 - c. Repealed by Session Laws 1987, c. 729, s. 2.
 - d. That the hernia or rupture immediately followed an accident. Provided, however, a hernia shall be compensable under this Article if it arises out of and in the course of the employment and is the direct result of a specific traumatic incident of the work assigned.
 - e. That the hernia or rupture did not exist prior to the accident for which compensation is claimed.

All hernia or rupture, inguinal, femoral or otherwise, so proven to be the result of an injury by accident arising out of and in the course of employment, shall be treated in a surgical manner by a radical operation. If death results from such operation, the death shall be considered as a result of the injury, and compensation paid in accordance with the provisions of G.S. 97-38. In nonfatal cases, if it is shown by special examination, as provided in G.S. 97-27, that the injured employee has a disability resulting after the operation,

compensation for such disability shall be paid in accordance with the provisions of this Article.

In case the injured employee refuses to undergo the radical operation for the cure of said hernia or rupture, no compensation will be allowed during the time such refusal continues. If, however, it is shown that the employee has some chronic disease, or is otherwise in such physical condition that the Commission considers it unsafe for the employee to undergo said operation, the employee shall be paid compensation in accordance with the provisions of this Article.

- (19) Medical Compensation. - The term "medical compensation" means medical, surgical, hospital, nursing, and rehabilitative services, including, but not limited to, attendant care services prescribed by a health care provider authorized by the employer or subsequently by the Commission, vocational rehabilitation, and medicines, sick travel, and other treatment, including medical and surgical supplies, as may reasonably be required to effect a cure or give relief and for such additional time as, in the judgment of the Commission, will tend to lessen the period of disability; and any original artificial members as may reasonably be necessary at the end of the healing period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical circumstances.
- (20) Health care provider. - The term "health care provider" means physician, hospital, pharmacy, chiropractor, nurse, dentist, podiatrist, physical therapist, rehabilitation specialist, psychologist, and any other person providing medical care pursuant to this Article.
- (21) Managed care organization. - The term "managed care organization" means a preferred provider organization or a health maintenance organization regulated under Chapter 58 of the General Statutes. "Managed care organization" also means a preferred provider benefit plan of an insurance company, hospital, or medical service corporation in which utilization review or quality management programs are used to manage the provision of health care services and benefits under this Chapter.
- (22) Suitable employment. - The term "suitable employment" means employment offered to the employee or, if prohibited by the Immigration and Nationality Act, 8 U.S.C. § 1324a, employment available to the employee that (i) prior to reaching maximum medical improvement is within the employee's work restrictions, including rehabilitative or other noncompetitive employment with the employer of injury approved by the employee's authorized health care provider or (ii) after reaching maximum medical improvement is employment that the employee is capable of performing considering the employee's preexisting and injury-related physical and mental limitations, vocational skills, education, and experience and is located within a 50-mile radius of the

employee's residence at the time of injury or the employee's current residence if the employee had a legitimate reason to relocate since the date of injury. No one factor shall be considered exclusively in determining suitable employment.

§ 97-67. Postmortem examinations; notice to next of kin and insurance carrier.

Upon the filing of a claim for death from an occupational disease where in the opinion of the Industrial Commission a postmortem examination is necessary to accurately ascertain the cause of death, such examination shall be ordered by the Industrial Commission. A full report of such examination shall be certified to the Industrial Commission. The surviving spouse or next kin and the employer or his insurance carrier, if their identity and whereabouts can be reasonably ascertained, shall be given reasonable notice of the time and place of such postmortem examination, and, if present at such examination, shall be given an opportunity to witness the same. Any such person may be present at and witness such examination either in person or through a duly authorized representative. If such examination is not consented to by the surviving ~~husband or wife~~ spouse or next of kin, all right to compensation shall cease.

CHAPTER 105 - TAXATION

§ 105-151.12. (Repealed effective for taxable years beginning on or after January 1, 2014 - see note) Credit for certain real property donations.

(a) An individual or pass-through entity that makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, (iv) forestland or farmland conservation, (v) watershed protection, (vi) conservation of natural areas as that term is defined in G.S. 113A-164.3(3), (vii) conservation of natural or scenic river areas as those terms are used in G.S. 113A-34, (viii) conservation of predominantly natural parkland, or (ix) historic landscape conservation is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated in perpetuity for one of the qualifying uses listed in this subsection and accepted in perpetuity for the qualifying use for which the property is donated. The person to whom the property is donated must be the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions under the Code. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit.

To support the credit allowed by this section, the taxpayer must file with the income tax return for the taxable year in which the credit is claimed the following:

- (1) A certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection. The certification for a qualified donation made by a pass-through entity must be filed by the pass-through entity.
- (2) A self-contained or summary appraisal report as defined in Standards Rule 2-2 in the latest edition of the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation for the property. For fee simple absolute donations of real property, a taxpayer may submit documentation of the county's appraised value of the donated property, as adjusted by the sales assessment ratio, in lieu of an appraisal report.

(a1) Individuals. - The aggregate amount of credit allowed to an individual in a taxable year under this section for one or more qualified donations made during the taxable year, whether made directly or indirectly as owner of a pass-through entity, may not exceed two hundred fifty thousand dollars (\$250,000). In the case of property owned by a married couple, if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return. The aggregate amount of credit allowed to a ~~husband and wife~~ individuals married to each other filing a joint tax return may not exceed five hundred thousand dollars (\$500,000). If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section on a separate return.

(a2) Pass-Through Entities. - The aggregate amount of credit allowed to a pass-through entity in a taxable year under this section for one or more qualified donations made during the taxable year, whether made directly or indirectly as owner of another pass-through entity, may not exceed five hundred thousand dollars (\$500,000). Each individual who is an owner of a pass-through entity is allowed as a credit an amount equal to the owner's allocated share of the credit to which the pass-through entity is eligible under this subsection, not to exceed two hundred fifty thousand dollars (\$250,000). Each corporation that is an owner of a pass-through entity is allowed as a credit an amount equal to the owner's allocated share of the credit to which the pass-through entity is eligible under this subsection, not to exceed five hundred thousand dollars (\$500,000). If an owner's share of the pass-through entity's credit is limited due to the maximum allowable credit under this section for a taxable year, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

Any unused portion of this credit may be carried forward for the next succeeding five years.

(c) Repealed by Session Laws 1998-212, s. 29A.13(b).

(d) Repealed by Session Laws 2007-309, s. 2, effective for taxable years beginning on or after January 1, 2007.

(e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-205, the offer of donation must be made before December 31, 2003 to qualify for the credit allowed by this section.

(f) Repealed by Session Laws 2007-309, s. 2, effective for taxable years beginning on or after January 1, 2007.

§ 105-151.13. (Repealed effective for taxable years beginning on or after January 1, 2014 - see note) Credit for conservation tillage equipment.

(a) A taxpayer who purchases conservation tillage equipment for use in a farming business, including tree farming, shall be allowed as a credit against the tax imposed by this Part an amount equal to twenty-five percent (25%) of the cost of the equipment paid during the taxable year. This credit may not exceed two thousand five hundred dollars (\$2,500) for any taxable year. The credit may be claimed only by the first purchaser of the equipment and may not be claimed by a person who purchases the equipment for resale or for use outside this State. This credit may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except tax payments made by or on behalf of the taxpayer. If the credit allowed by this section exceeds the tax imposed under this Part, the excess may be carried forward for the next succeeding five years. The basis in any equipment for which a credit is allowed under this section shall be reduced by the amount of the credit allowable.

(b) As used in this section, "conservation tillage equipment" means:

- (1) A planter such as a planter commonly known as a "no-till" planter designed to minimize disturbance of the soil in planting crops or trees, including equipment that may be attached to equipment already owned by the taxpayer; or
- (2) Equipment designed to minimize disturbance of the soil in reforestation site preparation, including equipment that may be attached to equipment already owned by the taxpayer; provided, however, this shall include only those items of equipment generally known as a "KG-Blade", a "drum-chopper", or a "V-Blade".

(c) In the case of conservation tillage equipment owned jointly by a ~~husband and wife~~ individuals married to each other, if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return. If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section on a separate return.

§ 105-152. (Recodified for taxable years beginning on or after January 1, 2014 - see editor's note) Income tax returns.

(a) Who Must File. - The following individuals shall file with the Secretary an income tax return under affirmation:

- (1) Every resident required to file an income tax return for the taxable year under the Code and every nonresident who (i) derived gross income from North Carolina sources during the taxable year attributable to the ownership of any interest in real or tangible personal property in this State or derived from a business, trade, profession, or occupation carried on in this State and (ii) is required to file an income tax return for the taxable year under the Code.
- (2) Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 930, s. 1.
- (3) Any individual whom the Secretary believes to be liable for a tax under this Part, when so notified by the Secretary and requested to file a return.

(b) Taxpayer Deceased or Unable to Make Return. - If the taxpayer is unable to file the income tax return, the return shall be filed by a duly authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer. If an individual who was required to file an income tax return for the taxable year while living has died before making the return, the administrator or executor of the estate shall file the return in the decedent's name and behalf, and the tax shall be levied upon and collected from the estate.

(c) Information Required With Return. - The income tax return shall show the adjusted gross income and adjustments required by this Part and any other information the Secretary requires. The Secretary may require some or all individuals required to file an income tax return to attach to the return a copy of their federal income tax return for the taxable year. The Secretary may require a taxpayer to provide the Department with copies of any other return the taxpayer has filed with the Internal Revenue Service and to verify any information in the return.

(d) Secretary May Require Additional Information. - When the Secretary has reason to believe that any taxpayer conducts a trade or business in a way that directly or indirectly distorts the taxpayer's adjusted gross income or North Carolina taxable income, the Secretary may require any additional information for the proper computation of the taxpayer's adjusted gross income and North Carolina taxable income. In computing the taxpayer's adjusted gross income and North Carolina taxable income, the Secretary shall consider the fair profit that would normally arise from the conduct of the trade or business.

(e) Joint Returns. - ~~A husband and wife~~ Individuals married to each other whose federal taxable income is determined on a joint federal return shall file a single income tax return jointly if each spouse either is a resident of this State or has North Carolina taxable income and may file a single income tax return jointly if one spouse is not a resident and has no North Carolina taxable income. Except as otherwise provided in this Part, ~~a wife and husband filing~~ individuals married to each other who file jointly are treated as one taxpayer for the purpose of determining

the tax imposed by this Part. ~~A husband and wife filing~~ Individuals married to each other who file jointly are jointly and severally liable for the tax imposed by this Part reduced by the sum of all credits allowable including tax payments made by or on behalf of the ~~husband and wife married couple~~. However, if a spouse qualifies for relief of liability for federal tax attributable to a substantial understatement by the other spouse pursuant to section 6015 of the Code, that spouse is not liable for the corresponding tax imposed by this Part attributable to the same substantial understatement by the other spouse. ~~A wife and husband filing~~ Individuals married to each other who file jointly have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone.

(f) Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 930, s. 1.

§ 105-153.8. (Effective for taxable years beginning on or after January 1, 2014) Income tax returns.

(a) Who Must File. - The following individuals must file with the Secretary an income tax return under affirmation:

- (1) Every resident required to file an income tax return for the taxable year under the Code.
- (2) Every nonresident individual who meets all of the following requirements:
 - a. Receives during the taxable year gross income that is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State, is derived from a business, trade, profession, or occupation carried on in this State, or is derived from gambling activities in this State.
 - b. Is required to file an income tax return for the taxable year under the Code.
- (3) Any individual whom the Secretary believes to be liable for a tax under this Part, when so notified by the Secretary and requested to file a return.

(b) Taxpayer Deceased or Unable to Make Return. - If a taxpayer is unable to file an income tax return, a duly authorized agent of the taxpayer or a guardian or other person charged with the care of the person or property of the taxpayer must file the return. If an individual who was required to file an income tax return for the taxable year while living has died before making the return, the administrator or executor of the estate must file the return in the decedent's name and behalf, and the tax is payable by the estate.

(c) Information Required With Return. - The income tax return must show the adjusted gross income and modifications required by this Part, and any other information the Secretary requires. The Secretary may require some or all individuals required to file an income tax return to attach to the return a copy of their federal income tax return for the taxable year. The Secretary may require a taxpayer to provide the Department with copies of any other return the taxpayer has filed with the Internal Revenue Service and to verify any information in the return.

(d) Secretary May Require Additional Information. - When the Secretary has reason to believe that any taxpayer conducts a trade or business in a way that directly or indirectly distorts the taxpayer's adjusted gross income or North Carolina taxable income, the Secretary may require any additional information for the proper computation of the taxpayer's adjusted gross income and North Carolina taxable income. In computing the taxpayer's adjusted gross income and North Carolina taxable income, the Secretary must consider the fair profit that would normally arise from the conduct of the trade or business.

(e) Joint Returns. - ~~A husband and wife~~ Individuals married to each other whose adjusted gross income is determined on a joint federal return must file a single income tax return jointly if each spouse either is a resident of this State or has North Carolina taxable income and may file a single income tax return jointly if one spouse is not a resident and has no North Carolina taxable income. Except as otherwise provided in this Part, a ~~wife and husband filing~~ individuals married to each other who file jointly are treated as one taxpayer for the purpose of determining the tax imposed by this Part. ~~A husband and wife filing~~ Individuals married to each other who file jointly are jointly and severally liable for the tax imposed by this Part reduced by the sum of all credits allowable including tax payments made by or on behalf of the ~~husband and wife married couple~~. However, if a spouse qualifies for relief of liability for federal tax attributable to a substantial understatement by the other spouse pursuant to section 6015 of the Code, that spouse is not liable for the corresponding tax imposed by this Part attributable to the same substantial understatement by the other spouse. ~~A wife and husband filing~~ Individuals married to each other who file jointly have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone.

§ 105-187.6. Exemptions from highway use tax.

(a) Full Exemptions. - The tax imposed by this Article does not apply when a certificate of title is issued as the result of a transfer of a motor vehicle:

- (1) To (i) the insurer of the motor vehicle under G.S. 20-109.1 because the vehicle is a salvage vehicle or (ii) a used motor vehicle dealer under G.S. 20-109.1 because the vehicle is a salvage vehicle that was abandoned.
- (2) To either a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale.

- (3) To the same owner to reflect a change or correction in the owner's name.
- (3a) To one or more of the same co-owners to reflect the removal of one or more other co-owners, when there is no consideration for the transfer.
- (4) By will or intestacy.
- (5) By a gift between ~~a husband and wife~~ an individual and his or her spouse, a parent and child, or a stepparent and a stepchild.
- (6) By a distribution of marital or divisible property incident to a marital separation or divorce.
- (7) Repealed by Session Laws 2009-445, s. 16, effective August 7, 2009.
- (8) To a local board of education for use in the driver education program of a public school when the motor vehicle is transferred:
 - a. By a retailer and is to be transferred back to the retailer within 300 days after the transfer to the local board.
 - b. By a local board of education.
- (9) To a volunteer fire department or volunteer rescue squad that is not part of a unit of local government, has no more than two paid employees, and is exempt from State income tax under G.S. 105-130.11, when the motor vehicle is one of the following:
 - a. A fire truck, a pump truck, a tanker truck, or a ladder truck used to suppress fire.
 - b. A four-wheel drive vehicle intended to be mounted with a water tank and hose and used for forest fire fighting.
 - c. An emergency services vehicle.
- (10) To a State agency from a unit of local government, volunteer fire department, or volunteer rescue squad to enable the State agency to transfer the vehicle to another unit of local government, volunteer fire department, or volunteer rescue squad.
- (11) To a revocable trust from an owner who is the sole beneficiary of the trust.

(b) Partial Exemptions. - A maximum tax of forty dollars (\$40.00) applies when a certificate of title is issued as the result of a transfer of a motor vehicle:

- (1) To a secured party who has a perfected security interest in the motor vehicle.
- (2) To a partnership, limited liability company, corporation, trust, or other person where no gain or loss arises on the transfer of the motor vehicle under section 351 or section 721 of the Code, or because the transfer is treated under the Code as being to an entity that is not a separate entity from its owner or whose separate existence is otherwise disregarded, or to a partnership, limited liability company, or corporation by merger, conversion, or consolidation in accordance with applicable law.

(c) Out-of-state Vehicles. – A maximum tax of two hundred fifty dollars (\$250.00) applies when a certificate of title is issued for a motor vehicle that, at the time of applying for a certificate of title, is and has been titled in the name of the owner of the motor vehicle in another state for at least 90 days prior to the date of application for a certificate of title in this State.

§ 105-277.1. Elderly or disabled property tax homestead exclusion.

(a) Exclusion. - A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and is taxable in accordance with this section. The amount of the appraised value of the residence equal to the exclusion amount is excluded from taxation. The exclusion amount is the greater of twenty five thousand dollars (\$25,000) or fifty percent (50%) of the appraised value of the residence. An owner who receives an exclusion under this section may not receive other property tax relief.

A qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

- (1) Is at least 65 years of age or totally and permanently disabled.
- (2) Has an income for the preceding calendar year of not more than the income eligibility limit.
- (3) Is a North Carolina resident.

(a1) Temporary Absence. - An otherwise qualifying owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(a2) Income Eligibility Limit. - For the taxable year beginning on July 1, 2008, the income eligibility limit is twenty-five thousand dollars (\$25,000). For taxable years beginning on or after July 1, 2009, the income eligibility limit is the amount for the preceding year, adjusted by the same percentage of this amount as the percentage of any cost-of-living adjustment made to the benefits under Titles II and XVI of the Social Security Act for the preceding calendar year,

rounded to the nearest one hundred dollars (\$100.00). On or before July 1 of each year, the Department of Revenue must determine the income eligibility amount to be in effect for the taxable year beginning the following July 1 and must notify the assessor of each county of the amount to be in effect for that taxable year.

(b) Definitions. - The following definitions apply in this section:

- (1) Code. - The Internal Revenue Code, as defined in G.S. 105-228.90.
- (1a) Income. - All moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. For married applicants residing with their spouses, the income of both spouses must be included, whether or not the property is in both names.
- (1b) Owner. - A person who holds legal or equitable title, whether individually, as a tenant by the entirety, a joint tenant, or a tenant in common, or as the holder of a life estate or an estate for the life of another. A manufactured home jointly owned by ~~husband and wife~~ individuals married to each other is considered property held by the entirety.
- (2) Repealed by Session Laws 1993, c. 360, s. 1.
- (2a) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 20.
- (3) Permanent residence. - A person's legal residence. It includes the dwelling, the dwelling site, not to exceed one acre, and related improvements. The dwelling may be a single family residence, a unit in a multi-family residential complex, or a manufactured home.
- (3a) Property tax relief. - The property tax homestead exclusion provided in this section, the property tax homestead circuit breaker provided in G.S. 105-277.1B, or the disabled veteran property tax homestead exclusion provided in G.S. 105-277.1C.
- (4) Totally and permanently disabled. - A person is totally and permanently disabled if the person has a physical or mental impairment that substantially precludes him or her from obtaining gainful employment and appears reasonably certain to continue without substantial improvement throughout his or her life.

(c) Application. - An application for the exclusion provided by this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the exclusion is claimed. When property is owned by two or more persons other than husband and wife and one or more of them qualifies for this exclusion, each owner must apply separately for his or her proportionate share of the exclusion.

- (1) Elderly Applicants. - Persons 65 years of age or older may apply for this exclusion by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1.
- (2) Disabled Applicants. - Persons who are totally and permanently disabled may apply for this exclusion by (i) entering the appropriate information on a form made available by the assessor under G.S. 105-282.1 and (ii) furnishing acceptable proof of their disability. The proof must be in the form of a certificate from a physician licensed to practice medicine in North Carolina or from a governmental agency authorized to determine qualification for disability benefits. After a disabled applicant has qualified for this classification, the applicant is not required to furnish an additional certificate unless the applicant's disability is reduced to the extent that the applicant could no longer be certified for the taxation at reduced valuation.

(d) Ownership by Spouses. - A permanent residence owned and occupied by ~~husband and wife~~ individuals married to each other is entitled to the full benefit of this exclusion notwithstanding that only one of them meets the age or disability requirements of this section.

(e) Other Multiple Owners. - This subsection applies to co-owners who are not ~~husband and wife~~ married to each other. Each co-owner of a permanent residence must apply separately for the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and none of the co-owners qualifies for the exclusion allowed under G.S. 105-277.1C, each co-owner is entitled to the full amount of the exclusion allowed under this section. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and one or more of the co-owners qualify for the exclusion allowed under G.S. 105-277.1C, each co-owner who qualifies for the exclusion under this section is entitled to the full amount of the exclusion. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the greater of the exclusion allowed under this section and the exclusion allowed under G.S. 105-277.1C.

§ 105-277.1B. Property tax homestead circuit breaker.

(a) Classification. - A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and is taxable in accordance with this section.

(b) Definitions. - The definitions provided in G.S. 105-277.1 apply to this section.

(c) Income Eligibility Limit. - The income eligibility limit provided in G.S. 105-277.1(a2) applies to this section.

(d) Qualifying Owner. - For the purpose of qualifying for the property tax homestead circuit breaker under this section, a qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

- (1) The owner has an income for the preceding calendar year of not more than one hundred fifty percent (150%) of the income eligibility limit specified in subsection (c) of this section.
- (2) The owner has owned the property as a permanent residence for at least five consecutive years and has occupied the property as a permanent residence for at least five years.
- (3) The owner is at least 65 years of age or totally and permanently disabled.
- (4) The owner is a North Carolina resident.

(e) Multiple Owners. - A permanent residence owned and occupied by ~~husband and wife~~ individuals married to each other is entitled to the full benefit of the property tax homestead circuit breaker notwithstanding that only one of them meets the length of occupancy and ownership requirements and the age or disability requirement of this section. When a permanent residence is owned and occupied by two or more persons other than ~~husband and wife~~ individuals married to each other, no property tax homestead circuit breaker is allowed unless all of the owners qualify and elect to defer taxes under this section.

(f) Tax Limitation. - A qualifying owner may defer the portion of the principal amount of tax that is imposed for the current tax year on his or her permanent residence and exceeds the percentage of the qualifying owner's income set out in the table in this subsection. If a permanent residence is subject to tax by more than one taxing unit and the total tax liability exceeds the tax limit imposed by this section, then both the taxes due under this section and the taxes deferred under this section must be apportioned among the taxing units based upon the ratio each taxing unit's tax rate bears to the total tax rate of all units.

Income Over	Income Up To	Percentage
-0-	Income Eligibility Limit	4.0%
Income Eligibility Limit	150% of Income Eligibility Limit	5.0%

(g) Temporary Absence. - An otherwise qualifying owner does not lose the benefit of this circuit breaker because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(h) Deferred Taxes. - The difference between the taxes due under this section and the taxes that would have been payable in the absence of this section are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes must be carried forward in the records of each taxing unit as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event described in subsection (i) of this section. On or before September 1 of each year, the collector must send to the mailing address of a residence on which taxes have been deferred a notice stating the amount of deferred taxes and interest that would be due and payable upon the occurrence of a disqualifying event.

(i) Disqualifying Events. - Each of the following constitutes a disqualifying event:

- (1) The owner transfers the residence. Transfer of the residence is not a disqualifying event if (i) the owner transfers the residence to a co-owner of the residence or, as part of a divorce proceeding, to his or her spouse and (ii) that individual occupies or continues to occupy the property as his or her permanent residence.
- (2) The owner dies. Death of the owner is not a disqualifying event if (i) the owner's share passes to a co-owner of the residence or to his or her spouse and (ii) that individual occupies or continues to occupy the property as his or her permanent residence.
- (3) The owner ceases to use the property as a permanent residence.

(j) Gap in Deferral. - If an owner of a residence on which taxes have been deferred under this section is not eligible for continued deferral for a tax year, the deferred taxes are carried forward and are not due and payable until a disqualifying event occurs. If the owner of the residence qualifies for deferral after one or more years in which he or she did not qualify for deferral and a disqualifying event occurs, the years in which the owner did not qualify are disregarded in determining the preceding three years for which the deferred taxes are due and payable.

(k) Repealed by Session Laws 2008-35, s. 1.2, effective July 1, 2008.

(l) Creditor Limitations. - A mortgagee or trustee that elects to pay any tax deferred by the owner of a residence subject to a mortgage or deed of trust does not acquire a right to foreclose as a result of the election. Except for requirements dictated by federal law or regulation, any provision in a mortgage, deed of trust, or other agreement that prohibits the owner from deferring taxes on property under this section is void.

(m) Construction. - This section does not affect the attachment of a lien for personal property taxes against a tax-deferred residence.

(n) Application. - An application for property tax relief provided by this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the relief is claimed. Persons may apply for

this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1.

§ 105-277.1C. Disabled veteran property tax homestead exclusion.

(a) Classification. - A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and is taxable in accordance with this section. The first forty-five thousand dollars (\$45,000) of appraised value of the residence is excluded from taxation. A qualifying owner who receives an exclusion under this section may not receive other property tax relief.

(b) Definitions. - The following definitions apply in this section:

- (1) Disabled veteran. - A veteran of any branch of the Armed Forces of the United States whose character of service at separation was honorable or under honorable conditions and who satisfies one of the following requirements:
 - a. As of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, the veteran had received benefits under 38 U.S.C. § 2101.
 - b. The veteran has received a certification by the United States Department of Veterans Affairs or another federal agency indicating that, as of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, he or she has a service-connected, permanent, and total disability.
 - c. The veteran is deceased and the United States Department of Veterans Affairs or another federal agency has certified that, as of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, the veteran's death was the result of a service-connected condition.
- (2) Repealed by Session Laws 2009-445, s. 22(c), effective for taxes imposed for taxable years beginning on or after July 1, 2009.
- (3) Permanent residence. - Defined in G.S. 105-277.1.
- (4) Property tax relief. - Defined in G.S. 105-277.1.
- (4a) Qualifying owner. - An owner, as defined in G.S. 105-277.1, who is a North Carolina resident and one of the following:
 - a. A disabled veteran.

b. The surviving spouse of a disabled veteran who has not remarried.

(5), (6) Repealed by Session Laws 2009-445, s. 22(c), effective for taxes imposed for taxable years beginning on or after July 1, 2009.

(7) Service-connected. - Defined in 38 U.S.C. § 101.

(c) Temporary Absence. - An owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(d) Ownership by Spouses - A permanent residence owned and occupied by ~~husband and wife~~ individuals married to each other is entitled to the full benefit of this exclusion notwithstanding that only one of them meets the requirements of this section.

(e) Other Multiple Owners. - This subsection applies to co-owners who are not ~~husband and wife~~ married to each other. Each co-owner of a permanent residence must apply separately for the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and none of the co-owners qualifies for the exclusion allowed under G.S. 105-277.1, each co-owner is entitled to the full amount of the exclusion allowed under this section. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and one or more of the co-owners qualify for the exclusion allowed under G.S. 105-277.1, each co-owner who qualifies for the exclusion allowed under this section is entitled to the full amount of the exclusion. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the greater of the exclusion allowed under this section and the exclusion allowed under G.S. 105-277.1.

(f) Application. - An application for the exclusion allowed under this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the exclusion is claimed. An applicant for an exclusion under this section must establish eligibility for the exclusion by providing a copy of the veteran's disability certification or evidence of benefits received under 38 U.S.C. § 2101.

§ 105-302. In whose name real property is to be listed.

(a) Taxable real property shall be listed in the name of the owner, and it shall be the owner's duty to list it unless the board of county commissioners shall have adopted a permanent listing

system as provided in G.S. 105-303(b). For purposes of this section, the board of county commissioners may require that real property be listed in the name of the owner of record as of the day as of which property is to be listed under G.S. 105-285.

(b) If real property is listed in the name of one other than the person in whose name it should be listed, and the name of the proper person is later ascertained, the abstract and tax records shall be corrected to list the property in the name of the person in whose name it should have been listed. The corrected listing shall have the same force and effect as if the real property had been listed in the name of the proper person in the first instance.

(c) For purposes of this Subchapter:

- (1) The owner of the equity of redemption in real property subject to a mortgage or deed of trust shall be considered the owner of the property, and such real property shall be listed in the name of the owner of the equity of redemption.
- (2) Real property owned by a corporation shall be listed in the name of the corporation.
- (3) Real property owned by an unincorporated association shall be listed in the name of the association.
- (4) Real property owned by a partnership shall be listed in the name of the partnership.
- (5) Real property held in connection with a sole proprietorship shall be listed in the name of the owner, and the name and address of the proprietorship shall be noted on the abstract.
- (6) Real property of which a decedent died possessed, if not under the control of an executor or administrator, shall be listed in the names of the heirs or devisees if known, but such property may be listed as property of "the heirs" or "the devisees" of the decedent, without naming them, until they have given the assessor notice of their names and of the division of the estate. It shall be the duty of an executor or administrator having control of real property to list it in his fiduciary capacity, as required by subdivision (c)(7), below, until he is divested of control of the property. However, the right of an administrator or executor of a deceased person to petition for the sale of real property to make assets shall not be considered control of the real property for the purposes of this subdivision.
- (7) Real property, the title to which is held by a trustee, guardian, or other fiduciary, shall be listed by the fiduciary in his fiduciary capacity except as otherwise provided in this section.

- (8) A life tenant or tenant for the life of another shall be considered the owner of real property, and it shall be his duty to list the property for taxation, indicating on the abstract that he is a life tenant or tenant for the life of another named individual.
- (9) Upon request to and with the approval of the assessor, undivided interests in real property owned by tenants in common who are not copartners may be listed by the respective owners in accordance with their respective undivided interests. Otherwise, real property held by tenants in common shall be listed in the names of all the owners.
- (10) Real property owned by ~~husband and wife~~ individuals married to each other as tenants by the entirety shall be listed on a single abstract in the names of both tenants, and the nature of their ownership shall be indicated thereon.
- (11) When land is owned by one party and improvements thereon or special rights (such as mineral, timber, quarry, waterpower, or similar rights) therein are owned by another party, the parties shall list their interests separately unless, in accordance with contractual relations between them, both the land and the improvements and special rights are listed in the name of the owner of the land.
- (12) If the person in whose name real property should be listed is unknown, or if title to real property is in dispute, the property shall be listed in the name of the occupant or, if there be no occupant, in the name of "unknown owner." Such a listing shall not affect the validity of the lien for taxes created by G.S. 105-355. When the name of the owner is later ascertained, the provisions of subsection (b), above, shall apply.
- (13) Real property, owned under a time-sharing arrangement but managed by a homeowners association or other managing entity, shall be listed in the name of the managing entity.

§ 105-306. In whose name personal property is to be listed.

(a) Taxable personal property shall be listed in the name of the owner on the day as of which property is to be listed for taxation, and it shall be the duty of the owner to list the property.

(b) If personal property is listed in the name of a person other than the one in whose name it should be listed, and the name of the proper person is later ascertained, the abstract and tax records shall be corrected to list the property in the name in which it should have been listed. The corrected listing shall have the same force and effect as if the personal property had been listed in the name of the proper person in the first instance.

(c) For purposes of this Subchapter:

- (1) The owner of the equity of redemption in personal property subject to a chattel mortgage shall be considered the owner of the property.
- (2) The vendee of personal property under a conditional bill of sale, or under any other sale contract through which title to the property is retained by the vender as security for the payment of the purchase price, shall be considered the owner of the property if he has possession of or the right to use the property.
- (3) Personal property owned by a corporation, partnership, or unincorporated association shall be listed in the name of the corporation, partnership, or unincorporated association.
- (4) Personal property held in connection with a sole proprietorship shall be listed in the name of the owner, and the name and address of the proprietorship shall be noted on the abstract.
- (5) Personal property of which a decedent died possessed, if not under the control of a personal representative, shall be listed in the names of the next of kin or devisees if known, but such property may be listed as property of "the next of kin" or "the devisees" of the decedent, without naming them, until they have given the assessor notice of their names and of the division of the estate. It shall be the duty of a personal representative having control of personal property to list it in the personal representative's fiduciary capacity, as required by subdivision (c)(6), below, until the personal representative is divested of control of the property.
- (6) Personal property, the title to which is held by a trustee, guardian, or other fiduciary, shall be listed by the fiduciary in his fiduciary capacity except as otherwise provided in this section.
- (7) If personal property is owned by two or more persons who are joint owners, each owner shall list the value of his interest. However, if the joint owners are ~~husband and wife~~ married to each other, the property owned jointly shall be listed on a single abstract in the names of both ~~the husband and the wife~~ spouses.
- (8) If the person in whose name personal property should be listed is unknown, or if the ownership of the property is in dispute, the property shall be listed in the name of the person in possession of the property, or if there appears to be no person in possession, in the name of "unknown owner." When the name of the owner is later ascertained, the provisions of subsection (b), above, shall apply.
- (9) Personal property, owned under a time-sharing arrangement but managed by a homeowners association or other managing entity, shall be listed in the name of the managing entity.

CHAPTER 110 – CHILD WELFARE

§ 110-130. Action by the designated representatives of the county commissioners.

Any county interested in the paternity and/or support of a dependent child may institute civil or criminal proceedings against the responsible parent of the child, or may take up and pursue any paternity and/or support action commenced by the mother, custodian or guardian of the child. Such action shall be undertaken by the designated representative in the county where the mother of the child resides or is found, in the county where the father resides or is found, or in the county where the child resides or is found. Any legal proceeding instituted under this section may be based upon information or belief. The parent of the child may be subpoenaed for testimony at the trial of the action to establish the paternity of and/or to obtain support for the child either instituted or taken up by the designated representative of the county commissioners. The ~~husband-wife~~ marital privilege shall not be grounds for excusing the mother or father from testifying at the trial nor shall said privilege be grounds for the exclusion of confidential communications between ~~husband and wife~~ spouses. If a parent called for examination declines to answer upon the grounds that his testimony may tend to incriminate him, the court may require him to answer in which event he shall not thereafter be prosecuted for any criminal act involved in the conception of the child whose paternity is in issue and/or for whom support is sought, except for perjury committed in this testimony.

§ 110-132.2. Expedited procedures to establish paternity in IV-D cases.

(a) In a IV-D court action, a local child support enforcement office may, without obtaining a court order, subpoena a minor child, the minor child's mother, and the putative father of the minor child (including the mother's ~~husband~~ spouse, if different from the putative father) to appear for the purpose of undergoing blood or genetic testing to establish paternity. A subpoena issued pursuant to this section must be served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. Refusal to comply with a subpoena may be dealt with as for contempt of court, and as otherwise provided under law. A party may contest the results of the genetic or blood test. If the results are contested, the agency shall, upon request and advance payment by the contestant, obtain additional testing.

(b) A person subpoenaed to submit to testing pursuant to subsection (a) of this section may contest the subpoena. To contest the subpoena, a person must, within 15 days of receipt of the subpoena, request a hearing in the county where the local child support enforcement office that issued the subpoena is located. The hearing shall be before the district court and notice of the hearing must be served by the petitioner on all parties to the proceeding. Service shall be in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The hearing shall be held and a determination made within 30 days of the petitioner's request for hearing as to whether the petitioner must comply with the subpoena to undergo testing. If the trial court determines that the petitioner must comply with the subpoena, the determination shall not prejudice any defenses the petitioner may present at any future paternity litigation.

CHAPTER 113 – CONSERVATION AND DEVELOPMENT

§ 113-201.1. Definitions.

As used in this Article:

- (1) "Natural shellfish bed" means an area of public bottom where oysters, clams, scallops, mussels or other shellfish are found to be growing in sufficient quantities to be valuable to the public.
- (2) "Riparian owner" means the holder(s) of the fee title to land that is bordered by waters of an arm of the sea or any other navigable body of water.
- (3) "Shellfish" means oysters, clams, scallops, mussels or any other species of mollusks that the Marine Fisheries Commission determines suitable for cultivation, harvesting, and marketing from public grounds and private beds.
- (4) "Single family unit" means ~~the husband and wife~~ individuals married to each other and any unemancipated children in the household.
- (5) "Water column" means the vertical extent of water, including the surface, above a designated area of submerged bottom land.

CHAPTER 135 – RETIREMENT SYSTEM FOR TEACHERS AND STATE EMPLOYEES; SOCIAL SECURITY; STATE HEALTH PLAN FOR TEACHERS AND STATE EMPLOYEES

§ 135-4. Creditable service.

(a) Under such rules and regulations as the Board of Trustees shall adopt, each member who was a teacher or State employee at any time during the five years immediately preceding the establishment of the System and who became a member prior to July 1, 1946, shall file a detailed statement of all North Carolina service as a teacher or State employee rendered by him prior to the date of establishment for which he claims credit; provided, that, notwithstanding the foregoing, any member retiring on or after July 1, 1965, with credit for not less than 10 years of membership service shall file such detailed statement of service as a teacher or State employee rendered by him prior to July 1, 1941, for which he claims credit; provided, that any member who retired on a service retirement allowance prior to July 1, 1965, who at the time of his retirement did not qualify for credit for his service as a teacher or State employee prior to July 1, 1941, may request on and after July 1, 1971, that his original benefit be recalculated, in accordance with the formula prevailing at the time of his retirement, to include credit for such service with the new benefit to become effective on the first of the month following certification of the prior service.

(b) The Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all services in one year. Service rendered for the regular school year in any district shall be equivalent to one year's service. Service rendered by a school employee in a job-sharing position shall be credited at the rate of one-half year for each regular school year of employment.

(c) Subject to the above restrictions and to such other rules and regulations as the Board of Trustees may adopt, the Board of Trustees shall verify, as soon as practicable after the filing of such statements of service, the service therein claimed.

In lieu of a determination of the actual compensation of the members that was received during such period of prior service the Board of Trustees may use for the purpose of this Chapter the compensation rates which will be determined by the average salary of the members for five years immediately preceding the date this System became operative as the records show the member actually received.

(d) Any member may, up to his date of retirement and within one year thereafter, request the Board of Trustees to modify or correct his prior service credit.

(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of service certified on his prior service certificate; and if he has sick leave standing to his credit upon retirement on or after July 1, 1971, one month of credit for each 20 days or portion thereof, but not less than one hour; sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for disability retirement or for a vested deferred allowance. Creditable service for unused sick leave shall be allowed only for sick leave accrued monthly during employment under a duly adopted sick leave policy and for which the member may be able to take credits and be paid for sick leave without restriction. However, in no instance shall unused sick leave be credited to a member's account at retirement if the member's last day of actual service is more than five years prior to the effective date of the member's retirement. Further, any agency with a sick leave policy that is more generous than that of all State agencies subject to the rules of the Office of State Human Resources shall proportionately adjust each of its retiring employees' sick leave balance to the balance that employee would have had under the rules of the Office of State Human Resources.

On and after July 1, 1971, a member whose account was closed on account of absence from service under the provisions of G.S. 135-3(3) and who subsequently returns to service for a period of five years, may thereafter repay in a lump sum the amount withdrawn plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service by the amount of creditable service lost when his account was closed.

On and after July 1, 1973, a member whose account in the North Carolina Local Governmental Employees' Retirement System was closed on account of absence from service

under the provisions of G.S. 128-24(1a) and who subsequently became or becomes a member of this System with credit for five years of service, may thereafter repay in a lump sum the amount withdrawn from the North Carolina Local Governmental Employees' Retirement System plus regular interest thereon from the date of withdrawal through the year of repayment and thereby increase his creditable service in this System by the amount of creditable service lost when his account was closed.

On or after July 1, 1979, a member who has obtained 60 months of aggregate service, or five years of membership service, as an employee of the North Carolina General Assembly, except legislators, participants in the Legislative Intern Program and pages, may make a lump sum payment together with interest, and an administrative fee for such service, to the Teachers' and State Employees' Retirement System of an amount equal to what he would have contributed had he been a member on his first day of employment.

On and after January 1, 1985, the creditable service of a member who was a member of the Law-Enforcement Officers' Retirement System at the time of the transfer of law-enforcement officers employed by the State from that System to this Retirement System and whose accumulated contributions are transferred from that System to this Retirement System, shall include service that was creditable in the Law-Enforcement Officers' Retirement System; and membership service with that System shall be membership service with this Retirement System; provided, notwithstanding any provision of this Article to the contrary, any inchoate or accrued rights of such a member to purchase creditable service for military service, withdrawn service and prior service under the rules and regulations of the Law-Enforcement Officers' Retirement System shall not be diminished and may be purchased as creditable service with this Retirement System under the same conditions which would have otherwise applied.

(f) Armed Service Credit. -

- (1) Teachers and other State employees who entered the Armed Forces of the United States on or after September 16, 1940, and prior to February 17, 1941, and who returned to the service of the State within a period of two years after they were first eligible to be separated or released from the Armed Forces of the United States under other than dishonorable conditions shall be entitled to full credit for all prior service. Pursuant to 38 U.S.C. § 4318(b)(1), when a member who has been on military leave returns to work consistent with the provisions of this subdivision, then the member's employer must remit to the System all the employer contributions for the full period of that member's military service.
- (2) Teachers and other State employees who entered the Armed Forces of the United States on or after September 16, 1940, and who returned to the service of the State prior to October 1, 1952, or who devote not less than 10 years of service to the State after they are separated or released from the Armed Forces of the United States under other than dishonorable conditions, shall be entitled to full credit for all prior service, and, in addition they shall receive membership service credit for the period of service in the Armed Forces of the

United States up to the date they were first eligible to be separated or released therefrom, occurring after the date of establishment of the Retirement System.

- (3) Teachers and other State employees who enter the Armed Forces of the United States on or after July 1, 1950, or who engage in active military service on or after July 1, 1950, and who return to the service of the State within a period of two years after they are first eligible to be separated or released from such active military service under other than dishonorable conditions shall be entitled to full membership service credit for the period of such active service in the Armed Forces of the United States.
- (4) Under such rules as the Board of Trustees shall adopt, credit will be provided by the Retirement System with respect to each such teacher or other State employee in the amounts that he or she would have been paid during such service in the Armed Forces of the United States on the basis of his or her earnable compensation when such service commenced. Such contributions shall be credited to the individual account of the member in the annuity savings fund, in such manner as the Board of Trustees shall determine, but any such contributions so credited and any regular interest thereon shall be available to the member only in the form of an annuity, or benefit in lieu thereof, upon the member's retirement on a service, disability or special retirement allowance; and in the event of cessation of membership or death prior thereto, any such contributions so credited and regular interest thereon shall not be payable to the member or on the member's account, but shall be transferred from the annuity savings fund to the pension accumulation fund. If any payments were made by a member on account of such service as provided by subdivision (5) of subsection (b) of G.S. 135-8, the Board of Trustees shall refund to or reimburse such member for such payments.
- (5) The provisions of this subsection shall also apply to members of the North Carolina National Guard with respect to teachers and State employees who are called into federal service or who are called into State service, to the extent that such persons fail to receive compensation for performance of the duties of their employment other than for service in the North Carolina National Guard.
- (6) Repealed by Session Laws 1981, c. 636, s. 1. For proviso as to inchoate or accrued rights, see Editor's Note below.
- (7) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service in the Armed Forces of the United States, not otherwise allowed, by paying a total lump sum payment determined as follows:
 - a. For members who completed 10 years of membership service, and retired members who completed 10 years of membership service prior to retirement, whose membership began on or prior to July 1, 1981,

and who make this purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when the member first entered membership service times the employee contribution rate at that time times the months of service to be purchased, with sufficient interest added thereto so as to equal one-half of the cost of allowing this service, plus an administrative fee to be set by the Board of Trustees.

- b. For members who complete five years of membership service, and retired members who complete five years of membership service prior to retirement, and eligible members and retired members covered by paragraph a. of this subdivision, whose membership began on or before July 1, 1981, but who did not or do not make this purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities and shall take into account the retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term "full liability" includes assumed post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance.

Creditable service allowed under this subdivision shall be only for the initial period of "active duty", as defined in 38 U.S. Code Section 101(21), in the Armed Forces of the United States up to the date the member was first eligible to be separated and released and for subsequent periods of "active duty", as defined in 38 U.S. Code Section 101(21), as required by the Armed Forces of the United States up to the date of first eligibility for separation or release, but shall not include periods of active duty in the Armed Forces of the United States creditable in any other retirement system except the National Guard or any reserve component of the Armed Forces of the United States, and shall not include periods of "active duty for training", as defined in 38 U.S. Code Section 101(22), or periods of "inactive duty training", as defined in 38 U.S. Code Section 101(23), rendered in any reserve component of the Armed Forces of the United States. Provided, creditable service may be allowed only for active duty in the Armed Forces of the United States of a member that resulted in a general or honorable discharge from duty. The member shall submit satisfactory evidence of the service claimed. For purposes of this subsection, membership service may include any membership

or prior service credits transferred to this Retirement System pursuant to G.S. 135-18.1.

(g) Teachers and other State employees who served in the uniformed services as defined in the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4303, and who, after being honorably discharged, returned to the service of the State within a period of two years from date of discharge shall be credited with prior service for such period of service in the uniformed services for the maximum period that they are entitled to reemployment under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301, et seq., or other federal law, and the salary or compensation of such a teacher or State employee during that period of service is deemed to be that salary or compensation the employee would have received but for the period of service had the employee remained continuously employed, if the determination of that salary or compensation is reasonably certain. If the determination of the salary or compensation is not reasonably certain, then it is deemed to be that employee's average rate of compensation during the 12-month period immediately preceding the period of service.

(h) During periods when a member is on leave of absence and is receiving less than his full compensation, he will be deemed to be in service only if he is contributing to the Retirement System as provided in G.S. 135-8(b)(5). If he is so contributing, the annual rate of compensation paid to such employee immediately before the leave of absence began will be deemed to be the actual compensation rate of the employee during the leave of absence.

(i) Any person who became a member after June 30, 1947, and before July 1, 1955, and did not subsequently withdraw his contributions may, prior to his retirement, increase his creditable service to the extent of the period of time from the date he became a "teacher or employee" as the terms are defined in this Chapter to the date he became a member, but not exceeding three months immediately preceding membership, provided that he makes an additional contribution in one lump sum equal to five per centum (5%) of the compensation he received for the aforesaid period of time plus regular interest thereon from the date he became a member to the date of payment.

(j) Creditable service at retirement shall include any service rendered by a member while on leave of absence to serve as a member or officer of the General Assembly which is not creditable toward retirement under the Legislative Retirement Fund provided the allowance of such credit shall be contingent upon the cancellation of service credit in the Fund and the transfer of the member's contributions plus accumulated interest from the Fund to this System.

(j1) Any member may purchase creditable service for service as a member of the General Assembly not otherwise creditable under this section, provided the service is not credited in the Legislative Retirement Fund nor the Legislative Retirement System, and further provided the member pays a lump sum amount equal to the full cost of the additional service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which a member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees.

Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(j2) The creditable service of a member who was a member of the Local Governmental Employees' Retirement System, the Consolidated Judicial Retirement System, or the Legislative Retirement System, and whose accumulated contributions and reserves are transferred from that System to this System, includes service that was creditable in the Local Governmental Employees' Retirement System, the Consolidated Judicial Retirement System, or the Legislative Retirement System, and membership service with those Retirement Systems is membership service with this Retirement System.

(k) Notwithstanding any other provision of this Chapter, any person who withdrew his contributions in accordance with the provisions of G.S. 128-27(f) or G.S. 135-5(f) or the rules and regulations of the Law-Enforcement Officers' Retirement System and who subsequently returns to service may, upon completion of five years of membership service, repay in a total lump sum any and all of the accumulated contributions previously withdrawn with interest compounded annually at the rate of six and one-half percent (6.5%) for each calendar year from the year of withdrawal to the year of repayment plus a fee to cover expense of handling which shall be determined by the Board of Trustees, and receive credit for the service forfeited at time of withdrawal. These provisions shall apply equally to retired members who had attained five years of membership service prior to retirement. The retirement allowance of a retired member who restores service under this subsection shall be increased the month following the month payment is received. The increase in the retirement allowance shall be the difference between the initial retirement allowance, under any optional allowance elected at the time of retirement, and the amount of the retirement allowance, under any optional allowance elected at the time of retirement, to which the retired member would have been entitled had the service not been previously forfeited, adjusted by any increases in the retirement accrual rate occurring between the member's date of retirement and the date of payment. The increase in the retirement allowance shall not include any adjustment for cost-of-living increases granted since the date of retirement.

Notwithstanding any provision to the contrary, a law enforcement officer who was transferred from the Law Enforcement Officers' Retirement System to this Retirement System pursuant to Article 12C of Chapter 143 of the General Statutes and withdrew his accumulated contributions prior to January 1, 1985, in accordance with G.S. 128-27(f) or G.S. 135-5(f) for non-law enforcement service and who has five years or more of membership service standing to his credit may repay in a total lump sum the accumulated contributions previously withdrawn with interest compounded annually at the rate of six and one-half percent (6.5%) for each calendar year from the year of withdrawal to the year of repayment plus a fee to cover expense of handling which shall be determined by the Board of Trustees, and receive credit for the service forfeited at time of withdrawal(s). The retirement allowance of a retired member who restores service under this subsection shall be increased the month following the month payment is received. The increase in the retirement allowance shall be the difference between the initial retirement allowance, under any optional allowance elected at the time of retirement, and the

amount of the retirement allowance, under any optional allowance elected at the time of retirement, to which the retired member would have been entitled had the service not been previously forfeited, adjusted by any increases in the retirement accrual rate occurring between the member's date of retirement and the date of payment. The increase in the retirement allowance shall not include any adjustment for cost-of-living increases granted since the date of retirement.

(l) Repealed by Session Laws 1981, c. 636, s. 1. For proviso as to inchoate or accrued rights, see Editor's Note below.

(11) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service previously rendered to any state, territory, or other governmental subdivision of the United States other than this State by paying a total lump-sum payment determined as follows:

- (1) For members who completed 10 years of current membership service, and retired members who completed 10 years of current membership service prior to retirement, whose membership began on or before July 1, 1981, and who make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when he first entered membership service, times the employee contribution rate at that time, times the months of service to be purchased, times two, with sufficient interest added thereto so as to equal the full cost of allowing such service, plus an administrative fee to be set by the Board of Trustees.
- (2) For members who complete five years of current membership service, and retired members who complete five years of current membership service prior to retirement, and eligible members and retired members covered by subdivision (1) of this subsection, whose membership began on or before July 1, 1981, but who did not or do not make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities and shall take into account the retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term "full liability" includes assumed postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance. Notwithstanding the requirement of five years of current membership service, a member whose membership began prior to the service the member desires to purchase shall be eligible to purchase creditable service under this subdivision upon returning to service as a teacher or employee upon completion of a total of

five years of membership service and upon completion of one year of current membership service.

Current membership service shall mean membership service earned since the service previously rendered to any state, territory, or other governmental subdivision of the United States other than this State. Creditable service under this subsection shall be allowed only at the rate of one year of out-of-state service for each year of membership service in this State, with a maximum allowable of 10 years of out-of-state service. Such service is limited to full-time service which would be allowable under the laws governing this System. Credit will be allowed only if no benefit is allowable in another public retirement system as a result of the service.

(m) Notwithstanding any language to the contrary of any provision of this section, or of any repealed provision of this section that was repealed with the inchoate and accrued rights preserved, all repayments and purchases of service credits, allowed under the provisions of this section or of any repealed provision of this section that was repealed with inchoate and accrued rights preserved, must be made within three years after the member first becomes eligible to make such repayments and purchases. Any member who does not repay or purchase service credits within said three years after first eligibility to make such repayments and purchases may, under the same conditions as are otherwise required, repay or purchase service credits provided that the repayment or purchase equals the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which such member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance. Notwithstanding the foregoing, on and after July 1, 2001, the provisions of this subsection shall not apply to the repayment of contributions withdrawn pursuant to subsection (k) of this section.

(n) Repealed by Session Laws 1981, c. 636, s. 1. For proviso as to inchoate or accrued rights, see Editor's Note below.

(o) Repealed by Session Laws 1981, c. 636, s. 1. For proviso as to inchoate or accrued rights, see Editor's Note below.

(p) Credit for prior temporary State employment. - Notwithstanding any other provision of this Chapter, a member may purchase service credit for temporary State employment upon completion of 10 years of membership service and subject to the condition that the member had been classified as a temporary employee for more than three years. Each employer shall certify to the Board of Trustees that an employee is eligible to purchase this service credit prior to the member making payment. Payment for the service credit shall be in a single lump sum based upon the amount the member would have contributed if he had been properly classified as a permanent employee and been a member of this retirement system.

(p1) Part-Time Service Credit. -

- (1) Notwithstanding any other provision of this Chapter, upon completion of five years of membership service, any member may purchase service previously rendered as a part-time teacher or employee of an employer as defined in G.S. 135-1(11) or G.S. 128-21(11), except for temporary or part-time service rendered while a full-time student in pursuit of a degree or diploma in a degree-granting program. Payment shall be made in a single lump sum in an amount equal to the full actuarial cost of providing credit for the service, together with interest and an administrative fee, as determined by the Board of Trustees on the advice of the Retirement System's actuary. Notwithstanding the provisions of G.S. 135-4(b), the Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year, as based on compensation, is equivalent to one year of service in proportion to "earnable compensation", but in no case shall more than one year of service be creditable for all service in one year. Service rendered for the regular school year in any district shall be equivalent to one year's service. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.
- (2) Under all requirements and conditions set forth in the preceding subdivision of this subsection (p1), except for the requirement that the completion of five years of membership service be subsequent to service rendered as a part-time teacher or employee of the State, any member with five or more years of membership service standing to his credit may purchase additional membership service for service rendered as a part-time teacher or employee of the State if (i) the member terminates or has terminated employment in any capacity as a teacher or employee of the State, (ii) the purchase of the additional membership service causes the member to become eligible to commence an early or service retirement allowance, and (iii) the member immediately elects to commence retirement and become a beneficiary.
- (3) Under all the requirements and conditions set forth in subdivision (1) of this subsection, except for the condition that part-time service rendered when a full-time student in pursuit of a degree or diploma in a degree-granting program is not eligible for purchase, any member with five or more years of membership service standing to the member's credit may purchase creditable service for service rendered as a part-time teacher or employee of the State if that service was rendered on a permanent part-time basis and required at least 20 hours of service per week.

(q) Notwithstanding any other provision of this Chapter, any member who entered service or was restored to service prior to July 1, 1982, and was excluded from membership service solely

on account of having attained the age of 62 years, in accordance with former G.S. 135-3(6), may purchase membership service credits of such excluded service by making a lump-sum payment equal to the contributions that would have been deducted pursuant to G.S. 135-8(b) had he been a member of the Retirement System, increased by interest calculated at a rate of seven percent (7%) per annum.

(r) Notwithstanding any other provision of this Chapter, any member may purchase creditable service for periods of employer approved leaves of absence when in receipt of benefits under the North Carolina Workers' Compensation Act. This service shall be purchased by paying a cost calculated in the following manner:

- (1) Leaves of Absence Terminated Prior to July 1, 1983. - The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminated upon return to service prior to July 1, 1983, shall be a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the board of trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the board of trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.
- (2) Leaves of Absence Terminating On and After July 1, 1983, but before January 1, 1988. - The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminates upon return to service on and after July 1, 1983, but before January 1, 1988, shall be a lump sum amount due and payable to the Annuity Savings Fund within six months from return to service equal to the total employee and employer percentage rates of contribution in effect at the time of purchase and based on the annual rate of compensation of the member immediately prior to the leave of absence; Provided, however, the cost to a member whose amount due is not paid within six months from return to service shall be the amount due plus one percent (1%) per month penalty for each month or fraction thereof the payment is made beyond the six-month period.
- (3) Leaves of Absence Terminating On and After January 1, 1988. - The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminates upon or before a return to service on and after January 1, 1988, shall be due

and payable to the Annuity Savings Fund within six months from return to service and shall be a lump sum amount equal to the employee percentage rate of contribution in effect at the time of purchase applied to the annual rate of compensation of the member immediately prior to the leave of absence. For members electing to make this payment, the member's employer which granted the leave of absence, or the member's employer upon a return to service, or both, shall make a matching lump sum payment to the Pension Accumulation Fund within six months from return to service equal to the employer percentage rate of contribution in effect at the time of purchase applied to the annual rate of compensation of the member immediately prior to the leave of absence. Such purchases of creditable service are applicable only when members have membership service credits within 30 days prior to the leave of absence and within 12 months following the leave of absence and such membership service is creditable service at the time of purchase. Notwithstanding any other provision of this subdivision, the cost to a member and to a member's employer or former employer or both employers whose amount due is not paid within six months from return to service shall be the amount due plus one percent (1%) per month penalty for each month or fraction thereof that the payment is made after the six-month period.

Notwithstanding the requirement of this provision that a member return to service, a member who is in receipt of Workers' Compensation during the period for which he or she would have otherwise been eligible to receive short-term benefits as provided in G.S. 135-105 and who subsequently becomes a beneficiary in receipt of a benefit as provided in G.S. 135-106 may purchase creditable service for any period of employer approved leave of absence when in receipt of benefits under the North Carolina Workers' Compensation Act. The cost to purchase such creditable service shall be as determined above provided the amount due if not paid within six months from the beginning of the long-term disability period as determined in G.S. 135-106 shall be the amount due plus one percent (1%) per month penalty for each month or fraction thereof that the payment is made after the six-month period.

Whenever the creditable service purchased pursuant to this subsection is for a period that occurs during the four consecutive calendar years that would have produced the highest average annual compensation pursuant to G.S. 135-1(5) had the member not been on leave of absence without pay, then the compensation that the member would have received during the purchased period shall be included in calculating the member's average final compensation. In such cases, the compensation that the member would have received during the purchased period shall be based on the annual rate of compensation of the member immediately prior to the leave of absence.

(s) Credit at Full Cost for Temporary Employment. - In addition to the provisions of subsection (p) above, any member may purchase creditable service for State employment when classified as a temporary teacher or employee subject to the conditions that the:

- (1) Member was employed by an employer as defined in G.S. 135-1(11) or G.S. 128-21(11);
- (2) Member's temporary employment met all other requirements of G.S. 135-1(10) or (25), or G.S. 128-21(10);
- (3) Member has completed five years or more of membership service;
- (4) Member acquires from the employer such certifications of temporary employment as are required by the Board of Trustees; and
- (5) Member makes a lump sum payment into the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the Retirement System's liabilities and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary, plus an administrative expense fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

The provisions of this subsection shall also apply to the purchase of creditable service for State employment when classified as a permanent hourly employee in accordance with G.S. 126-5(c4).

(t) Credit at Full Cost for Local Government Employment. - Any member may purchase creditable service for any employment as an employee, as defined in G.S. 128-21(10), of a local government employer not creditable in the North Carolina Local Governmental Employees' Retirement System upon completion of five years of membership service by making a lump-sum payment into the Annuity Savings Fund. The payment by the member shall be equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the Retirement System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire with an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary plus an administrative expense fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(u) Any member who was a wildlife protector who elected to become a member of the Law Enforcement Officers' Retirement System pursuant to Chapter 837 of the 1971 Session Laws by the transfer of accumulated contributions from this Retirement System to the Law Enforcement Officers' Retirement System and who has not subsequently applied for and received a return of accumulated contributions shall be entitled to creditable service for the service as a non-law enforcement officer forfeited as a result of the transfer pursuant to Chapter 837 of the 1971 Session Laws.

(v) Omitted Membership Service. - A member who had service as an employee as defined in G.S. 135-1(10) and G.S. 128-21(10) or as a teacher as defined in G.S. 135-1(25) and who was omitted from contributing membership through error may be allowed membership service, after submitting clear and convincing evidence of the error, as follows:

- (1) Within 90 days of the omission, by the payment of employee and employer contributions that would have been paid; or
- (2) After 90 days and prior to three years of the omission, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the greater of the average yield on the pension accumulation fund for the preceding calendar year or the actuarial investment rate-of-return assumption, as adopted by the Board of Trustees; or
- (3) After three years of the omission, by the payment of an amount equal to the full cost of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the system's liabilities, and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which a member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

Nothing contained in this subsection shall prevent an employer or member from paying all or a part of the cost of the omitted membership service; and to the extent paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund; and to the extent paid by the member, the cost paid by the members shall be credited to the member's annuity savings account; provided, however, an employer does not discriminate against any member or group of members in his employ in paying all or any part of the cost of the omitted membership service.

(w) Credit at Full Cost for Federal Employment. - Notwithstanding any other provisions of this Chapter, a member, upon the completion of five years of membership service, may purchase

creditable service for periods of federal employment, provided that the member is not receiving any retirement benefits resulting from this federal employment, and provided that the member is not vested in the particular federal retirement system to which the member may have belonged while a federal employee. The member shall purchase this service by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

Members may also purchase creditable service for periods of employment with public community service entities within the State funded entirely with federal funds, other than the federal government, that are not covered by the provisions of G.S. 128-21(11) or G.S. 135-1(11), under the same terms and conditions that are applicable to the purchase of creditable service for periods of federal employment in accordance with this subsection. "Public community service entities" as used in this subsection shall mean community action, human relations, manpower development, and community development programs as defined in Articles 19 and 21 of Chapter 160A and Article 18 of Chapter 153A of the General Statutes and any other similar programs that the Board of Trustees may adopt.

(x) Repealed by Session Laws 2001-424, s. 32.32(c), effective July 1, 2001.

(y) A member who is a beneficiary of the Disability Income Plan provided for in Article 6 of this Chapter shall be granted creditable service for each month that the member is eligible for and for which a benefit is paid under the provisions of G.S. 135-105 and G.S. 135-106; provided, however, that in no instance shall a member be granted creditable service under this subsection if creditable service is earned or credited for the same month in this retirement system or any other retirement system administered by the State.

(z) Credit at Full Cost for Leave Due to Extended Illness. - Any member in service with five or more years of membership service standing to his credit may purchase creditable service for periods of interrupted service while on leave without pay status due to the member's illness or injury, excluding parental leave or leave due to pregnancy or childbirth, ~~due to maternity~~, provided that any single such interrupted service shall have included such period of time during which the member failed to earn at least two months membership service, by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities; and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an

administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(aa) Credit at Full Cost for ~~Maternity~~ Parental Leave. - Notwithstanding other provisions of this Chapter, any member in service with five or more years of credited membership service may purchase creditable service for periods of service which were interrupted due to parental leave, pregnancy or childbirth, or involuntary administrative furlough due to a lack of funds to support the position by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities; and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Creditable service purchased under this subsection may not exceed six months per parental leave, pregnancy or childbirth, or involuntary administrative furlough due to a lack of funds to support the position. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term "full liability" includes assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(bb) Credit at Full Cost for Probationary Local Government Employment. - Notwithstanding any other provision of this Chapter, a member may purchase creditable service, prior to retirement, for employment with any local employer as defined in G.S. 128-21(11) when considered to be in a probationary or employer-imposed waiting period status, between the date of employment and the date of membership service with the Local Governmental Employees' Retirement System, provided that the former employer of such a member has revoked this probationary employment or waiting period policy.

The member shall purchase this service by making a lump-sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the liabilities of the retirement system, and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the provisions of this subsection that provide for the purchase of service credits, the term "full liability" includes assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(cc) Credit for Employment in Charter School Operated by a Private Nonprofit Corporation. - Any member may purchase creditable service for any employment as an employee of a charter

school operated by a private nonprofit corporation whose board of directors did not elect to participate in the Retirement System under G.S. 135-5.3 upon completion of five years of membership service after that charter school employment by making a lump-sum payment into the Annuity Savings Fund. The payment by the member shall be equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the Retirement System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire with an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary plus an administrative expense fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(dd) Purchase of Service Credits Through Rollover Contributions From Certain Other Plans. - Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S. 135-4, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through rollover contributions to the Annuity Savings Fund from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code, (ii) an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, (iii) an individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income, or (iv) a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code. Notwithstanding the foregoing, the Retirement System shall not accept any amount as a rollover contribution unless such amount is eligible to be rolled over to a qualified trust in accordance with applicable law and the member provides evidence satisfactory to the Retirement System that such amount qualifies for rollover treatment. Unless received by the Retirement System in the form of a direct rollover, the rollover contribution must be paid to the Retirement System on or before the 60th day after the date it was received by the member.

Purchase of Service Credits Through Plan-to-Plan Transfers. - Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S. 135-4, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code or (ii) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(ee) Purchase of Service Credits Through Plan-to-Plan Transfers. - Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise

set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of G.S. 135-4, may, subject to such rules and regulations established by the Board of Trustees, purchase such service credits through a direct transfer to the Annuity Savings Fund of funds from (i) the Supplemental Retirement Income Plans A, B, or C of North Carolina or (ii) any other defined contribution plan qualified under Section 401(a) of the Internal Revenue Code which is maintained by the State of North Carolina, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(ff) Retroactive Membership Service. - A member who is reinstated to service as an employee as defined in G.S. 135-1(10) or as a teacher as defined in G.S. 135-1(25) retroactively to the date of prior involuntary termination with back pay, as defined by the State Human Resources Commission, and associated benefits may be allowed membership service, after submitting clear and convincing evidence of the reinstatement, payment of back pay, and restoration of associated benefits, as follows:

- (1) When the reinstatement to service is by court order, final decision of an Administrative Law Judge, or with the approval of the Office of State Human Resources Director, and is:
 - a. Within 90 days of the involuntary termination, by the payment of employee and employer contributions that would have been paid; or
 - b. After 90 days of the involuntary termination, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the greater of the average yield on the pension accumulation fund for the preceding calendar year or the actuarial investment rate-of-return assumption, as adopted by the Board of Trustees.
- (2) When the reinstatement to service is by settlement agreement voluntarily entered into by the affected parties, by the payment of a lump-sum amount equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, taking into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost," "full liability," and "full actuarial cost" include assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

Nothing contained in this subsection shall prevent an employer or member from paying all or a part of the cost of the retroactive membership service; and to the extent paid by the employer, the cost paid by the employer shall be credited to the pension accumulation fund; and to the extent paid by the member, the cost paid by the member shall be credited to the member's annuity savings account; provided, however, an employer does not discriminate against any member or group of members in his employ in paying all or any part of the cost of the retroactive membership service.

In the event a member received a return of accumulated contributions subsequent to an involuntary termination as provided in G.S. 135-5(f), the member may redeposit, within 90 days of reinstatement retroactive to the date of prior involuntary termination, in the annuity savings fund by single payment an amount equal to the total amount he previously withdrew plus regular interest and restore the creditable service forfeited upon receiving his return of accumulated contributions.

(gg) If a member who is an elected government official and has not vested in this System on July 1, 2007, is convicted of an offense listed in G.S. 135-18.10 for acts committed after July 1, 2007, then that member shall forfeit all benefits under this System, except for a return of member contributions plus interest. If a member who is an elected government official and has vested in this System on July 1, 2007, is convicted of an offense listed in G.S. 135-18.10 for acts committed after July 1, 2007, then that member is not entitled to any creditable service that accrued after July 1, 2007. No member shall forfeit any benefit or creditable service earned from a position not as an elected government official.

(hh) Credit at Full Cost for Service With The University of North Carolina During Which a Member Participated in the Optional Retirement Program. - Notwithstanding any other provisions of this Chapter, a member upon the completion of five years of membership service may purchase creditable service for periods of employment with The University of North Carolina during which the member participated in the Optional Retirement Program as provided for in G.S. 135-5.1, provided that the member is not receiving, and is not entitled to receive, any retirement benefits resulting from this employment. The member shall purchase this service by making a lump-sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost," "full liability," and "full actuarial cost" include assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

(ii) If a member who is in service and has not vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 135-18.10A for acts committed after December 1, 2012, then that member shall forfeit all benefits under this System, except for a return of member contributions plus interest. If a member who is in service and has vested in this System on

December 1, 2012, is convicted of an offense listed in G.S. 135-18.10A for acts committed after December 1, 2012, then that member is not entitled to any creditable service that accrued after December 1, 2012.

(jj) Contribution-Based Benefit Cap Purchase Provision. - If a member's retirement allowance is subject to an adjustment pursuant to the contribution-based benefit cap established in G.S. 135-5(a3), the retirement system shall notify the member and the member's employer that the member's retirement allowance has been capped. The retirement system shall compute and notify the member and the member's employer of the total additional amount the member would need to contribute in order to make the member not subject to the contribution-based benefit cap. This total additional amount shall be the actuarial equivalent of a single life annuity adjusted for the age of the member at the time of retirement, or when appropriate, the age at the time of the member's death that would have had to have been purchased to increase the member's benefit to the pre-cap level. The member shall have until 90 days after notification regarding this additional amount or until 90 days after the effective date of retirement, whichever is later, to submit a lump sum payment to the annuity savings fund in order for the retirement system to restore the retirement allowance to the uncapped amount. Nothing contained in this subsection shall prevent an employer from paying all or part of the cost of the amount necessary to restore the member's retirement allowance to the pre-cap amount.

§ 135-48.43. Effective dates of coverage.

(a) Eligible Employees and Retired Employees. - Employees and retirees who otherwise satisfy the eligibility requirements set forth in G.S. 135-48.40 will be offered coverage with the following effective dates:

- (1) Employees and retired employees covered under the Predecessor Plan will continue to be covered, subject to the terms hereof.
- (2) New employees may apply for coverage to be effective on the first day of the month following employment, or on a like date the following month if the employee has enrolled, except that the effective date of coverage for employees who become eligible in accordance with G.S. 135-48.40(e) will be determined by the employing unit in a manner that is consistent with section 4980H of the Internal Revenue Code and the applicable regulations, as amended.
- (3) Employees not enrolling or adding dependents when first eligible in accordance with G.S. 135-48.42 may enroll later during annual enrollment, except employees who elect to change their coverage in accordance with rules adopted by the State Treasurer for optional alternative plans offered under the Plan.
- (4) Members of the General Assembly, beginning with the 1985 Session, shall become first eligible with the convening of each Session of the General

Assembly, regardless of a Member's service during previous Sessions. Members and their dependents enrolled when first eligible after the convening of each Session of the General Assembly will not be subject to any waiting periods for preexisting health conditions. Members of the 1983 Session of the General Assembly, not already enrolled, shall be eligible to enroll themselves and their dependents on or before October 1, 1983, without being subject to any waiting periods for preexisting health conditions.

(b) Waiting Periods and Preexisting Conditions. -

- (1) New employees and dependents age 19 and older enrolling when first eligible are subject to no waiting period for preexisting conditions under the Plan.
- (2) Employees age 19 and older not enrolling or not adding dependents age 19 and older when first eligible may enroll later during annual enrollment, but enrollees age 19 or older may be subject to a twelve-month waiting period for preexisting conditions except as provided in subdivision (a)(3) of this section. The waiting period under this subdivision is subject to applicable federal law.
- (3) Retiring employees and dependents enrolled when first eligible after an employee's retirement are subject to no waiting period for preexisting conditions under the Plan. Retiring employees not enrolled or not adding dependents age 19 and older when first eligible after an employee's retirement may enroll at a later time during annual enrollment, but may be subject to a 12-month waiting period for preexisting conditions except as provided in subdivision (a)(3) of this section.
- (4) Employees and dependents enrolling or reenrolling within 12 months after a termination of enrollment or employment that were not enrolled at the time of this previous termination, regardless of the employing units involved, shall not be considered as newly-eligible employees or dependents for the purposes of waiting periods and preexisting conditions. Employees and dependents transferring from optional prepaid alternative plans available under the Plan; employees and dependents immediately returning to service from an employing unit's approved periods of leave without pay for illness, injury, educational improvement, workers' compensation, parental duties, or for military reasons; employees and dependents immediately returning to service from a reduction in an employing unit's work force; retiring employees and dependents reenrolled in accordance with subdivision (3) of this subsection; formerly-enrolled dependents reenrolling as eligible employees; formerly-enrolled employees reenrolling as eligible dependents; and employees and dependents reenrolled without waiting periods and preexisting conditions under specific rules adopted by the State Treasurer in the best interests of the Plan shall not be considered reenrollments for the purpose of this subdivision. Furthermore, employees accepting permanent, full-time appointments who had previously worked in a part-time or temporary position and their qualified

dependents shall not be covered by waiting periods and preexisting conditions under this division provided enrollment as a permanent, full-time employee is made when the employee and his dependents are first eligible to enroll.

- (5) To administer the 12-month waiting period for preexisting conditions for employees age 19 and older and dependents age 19 and older under this Article, the Plan must give credit against the 12-month period for the time a person was covered under a previous plan if the previous plan's coverage was continuous to a date not more than 63 days before the effective date of coverage. As used in this subdivision, a "previous plan" means any policy, certificate, contract, or any other arrangement provided by any accident and health insurer, any hospital or medical service corporation, any health maintenance organization, any preferred provider organization, any multiple employer welfare arrangement, any self-insured health benefit arrangement, any governmental health benefit or health care plan or program, or any other health benefit arrangement. Waiting periods for preexisting conditions administered under this Article are subject to applicable federal law.

(c) Dependents of Employees and Retired Employees. -

- (1) Dependents of employees and retired employees who have family coverage under the Predecessor Plan will continue to be covered subject to the terms hereof.
- (2) Employees who have dependents may apply for family coverage at the time they enroll as provided in subdivisions (a)(2) and (a)(3) of this section and such dependents will be covered under the Plan beginning the same date as such employees.
- (3) Employees and retired employees may change from one category of coverage to a different category of coverage without a waiting period for preexisting conditions, and, as applicable, dependents will be covered under the Plan the first of the month or the first of the second month following the dependent's eligibility for coverage, provided written application is submitted to the Health Benefits Representative within 30 days of becoming eligible.
- (4) Employees or retired employees who wish to change to employee only coverage shall give written notice to their Health Benefits Representative within 30 days after any change in the status of dependents, (resulting from death, divorce, etc.) that requires a change in contract category. The effective date will be the first of the month following the dependent's ineligibility event. If notification was not made within the 30 days following the dependent's ineligibility event, the dependent will be retroactively removed the first of the month following the dependent's ineligibility event, and the coverage category change will be the first of the month following written notification, except in

cases of death, in which case the coverage category change will be made retroactive to the first of the month following the death.

- (5) Employees not adding dependents age 19 and older when first eligible may enroll later during annual enrollment, but dependents may be subject to a 12-month waiting period for preexisting health conditions except as provided in subdivision (a)(3) of this section.
- (6) Employees or retired employees who wish to change to employee only coverage even though their dependents continue to be eligible, shall give written notification to their Health Benefits Representative. Except as otherwise required by applicable federal law, the date of this category change will be the first of the month following written notification or any first of the month thereafter as desired by the employee.
- (7) The effective date for newborns or adopted children will be date of birth, date of adoption, or placement with adoptive parent provided member is currently covered under employee and family or employee and child coverage. If the member wishes to add a newborn or adopted child and is currently enrolled in employee only coverage, the member must submit application for coverage and a coverage type change within 30 days of the child's birth or date of adoption or placement. Effective date for the coverage category change is the first of the month in which the child is born, adopted, or placed. Adopted children may also be covered the first of the month following placement or adoption.

(d) Categories of Coverage Available. - There are four categories of coverage which an employee or retiree may elect.

- (1) Employee Only. - Covers enrolled employees only. Maternity benefits are provided to employee only.
- (2) Employee and Child. - Covers enrolled employee and all eligible dependent children. Maternity benefits are provided to the employee only.
- (3) Employee and Family. - Covers employee and spouse, and all eligible dependent children. Maternity benefits are provided to employee ~~or~~ and enrolled spouse.
- (4) Employee and Spouse. - Covers employee and spouse only. Maternity benefits are provided to the employee ~~or~~ and the employee's enrolled spouse.

(e) Firefighters, rescue squad workers, and members of the National Guard are subject to the same terms and conditions of this section as are employees. Eligible dependents of firefighters, rescue squad workers, and members of the National Guard are subject to the same terms and conditions of this section as are dependents of employees.

(f) If any provision of this section is in conflict with applicable federal law, federal law shall control to the extent of the conflict.

CHAPTER 143 – STATE DEPARTMENTS, INSTITUTIONS, AND COMMISSIONS

§ 143-166.2. Definitions.

(a) The term "dependent child" shall mean any unmarried child of the deceased officer, firefighter, rescue squad worker or senior member of the Civil Air Patrol whether natural, adopted, posthumously born or whether a child born out of wedlock as entitled to inherit under the Intestate Succession Act, who is under 18 years of age and dependent upon and receiving his or her chief support from said officer or firefighter or rescue squad worker or senior member of the Civil Air Patrol at the time of his or her death; provided, however, that if a dependent child is entitled to receive benefits at the time of the officer's or firefighter's or rescue squad worker's or senior Civil Air Patrol member's death as hereinafter provided, he or she shall continue to be eligible to receive such benefits regardless of his or her age thereafter; and further provided that any child over 18 years of age who is physically or mentally incapable of earning a living and any child over 18 years of age who was enrolled as a full-time student at the time of the officer's, the firefighter's, the rescue squad worker's or the senior Civil Air Patrol member's death shall so long as he or she remains a full-time student as defined in the Social Security Act be regarded as a dependent child and eligible to receive benefits under the provisions of this Article.

(b) The term "dependent parent" shall mean the parent of the deceased officer, firefighter, rescue squad worker or senior member of the Civil Air Patrol, whether natural or adoptive, who was dependent upon and receiving his or her total and entire support from the officer, firefighter, rescue squad worker or senior member of the Civil Air Patrol at the time of the injury which resulted in his or her death.

(c) The term "killed in the line of duty" shall apply to any law-enforcement officer, firefighter, rescue squad worker who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his or her official duties while in the discharge of his or her official duty or duties. When applied to a senior member of the Civil Air Patrol as defined in this Article, "killed in the line of duty" shall mean any such senior member of the North Carolina Wing-Civil Air Patrol who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his or her official duties while engaged in a State requested and approved mission pursuant to Article 13 of Chapter 143B of the General Statutes. For purposes of this Article, when a law enforcement officer, firefighter, rescue squad worker, or senior Civil Air Patrol member dies as the direct and proximate result of a myocardial infarction suffered while on duty or within 24 hours after participating in a training exercise or responding to an emergency situation, the law enforcement officer, firefighter, rescue squad worker, or senior Civil Air Patrol member is presumed to have been killed in the line of duty.

(d) The term "law-enforcement officer", "officer", or "firefighter" shall mean a sheriff and all law-enforcement officers employed full-time, permanent part-time, or temporarily by a sheriff, the State of North Carolina or any county or municipality thereof, whether paid or unpaid; and all full-time custodial employees and probation and parole officers of the Division of Adult Correction of the Department of Public Safety; and all full time institutional and full-time, permanent part-time, and temporary detention employees of the Division of Juvenile Justice of the Department of Public Safety and full-time, permanent part-time, and temporary detention officers employed by any sheriff, county or municipality, whether paid or unpaid. The term "firemen" shall mean both firefighter or firemen as defined in G.S. 58-84-5(3a), or "eligible firemen" as defined in Article 86 of Chapter 58 of the General Statutes, notwithstanding any age requirements set out in that Article, and all full-time, permanent part-time and temporary employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services during the time they are actively engaged in firefighting activities; or engaged in emergency response activities pursuant to G.S. 166A-19.77; and shall mean all full-time employees of the North Carolina Department of Insurance during the time they are actively engaged in firefighting activities, during the time they are training firefighters or rescue squad workers, and during the time they are engaged in activities as members of the State Emergency Response Team, when the Team has been activated; and shall mean all otherwise eligible persons who, while actively engaged as firefighters or rescue squad workers, are acting in the capacity of a fire or rescue instructor outside their own department or squad. The term "rescue squad worker" shall mean a person who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, this person must belong to an organized rescue squad which is eligible for membership in the North Carolina Association of Rescue and Emergency Medical Services, Inc., and the person must have attended a minimum of 36 hours of training in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue and Emergency Medical Services, Inc., must file a roster of those members meeting the above requirements with the State Treasurer on or about January 31 of each year, and this roster must be certified to by the secretary of said association. In addition, the term "rescue squad worker" shall mean a member of an ambulance service certified by the Department of Health and Human Services pursuant to Article 7 of Chapter 131E of the General Statutes. The Department of Health and Human Services shall furnish a list of ambulance service members to the State Treasurer on or about January 31 of each year. The term "Civil Air Patrol members" shall mean those senior members of the North Carolina Wing-Civil Air Patrol 18 years of age or older and currently certified pursuant to G.S. 143B-1031. The term "firefighter" shall also mean county fire marshals when engaged in the performance of their county duties. The term "rescue squad worker" shall also mean county emergency services coordinators when engaged in the performance of their county duties.

(e) The term "spouse" shall mean the ~~wife or husband of~~ individual lawfully married to the deceased officer, firefighter, rescue squad worker or senior Civil Air Patrol member at the time of the decedent's death who survives him or her and who was residing with such officer, firefighter, rescue squad worker, or senior Civil Air Patrol member at the time of and during the six months next preceding the date of injury to such officer, firefighter, rescue squad worker or senior Civil Air Patrol member which resulted in his or her death and who also resided with such officer, firefighter, rescue squad worker or senior Civil Air Patrol member from that date of

injury up to and at the time of his or her death; ~~and~~ provided, however, the part of this section requiring the spouse to have been residing with the deceased officer, firefighter, rescue squad worker or senior Civil Air Patrol member for six months next preceding the date of the injury which resulted in his or her death shall not apply where marriage occurred during this six-month period or where the officer, firefighter, rescue squad worker or senior Civil Air Patrol member was absent during this six-month period due to service in the Armed Forces of the United States.

(f) The term "official duties" means those duties performed while en route to, engaged in, or returning from training, or in the course of responding to, engaged in or returning from a call by the department of which he or she is a member, or from a call for assistance from any department or such organization within the State of North Carolina or within a service area contiguous to the borders of the State of North Carolina, when served or aided by a department from within the State of North Carolina. While within the State of North Carolina, any eligible person, as defined in this section or in G.S. 58-86-25, who renders service or assistance, of his or her own volition, at the scene of an emergency, is performing his or her official duties when:

- (1) Reasonably apparent circumstances require prompt decisions and actions to protect persons and property; and
- (2) The necessity of immediate action is so reasonably apparent that any delay in acting would seriously worsen the property damage or endanger any person's life.

CHAPTER 163 – ELECTIONS AND ELECTION LAWS

§ 163-30. County boards of elections; appointments; terms of office; qualifications; vacancies; oath of office; instructional meetings.

In every county of the State there shall be a county board of elections, to consist of three persons of good moral character who are registered voters in the county in which they are to act. Members of county boards of elections shall be appointed by the State Board of Elections on the last Tuesday in June 1985, and every two years thereafter, and their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified. Not more than two members of the county board of elections shall belong to the same political party.

No person shall be eligible to serve as a member of a county board of elections who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person who holds any office in a state, congressional district, county or precinct political party or organization, or who is a campaign manager or treasurer of any candidate or political party in a primary or election, shall be eligible to serve as a member of a county board of elections, provided however that the position of delegate to a political party convention shall not be considered an office for the purpose of this section.

No person shall be eligible to serve as a member of a county board of elections who is a candidate for nomination or election.

No person shall be eligible to serve as a member of a county board of elections who is the ~~wife, husband~~ spouse, son, son-in-law, daughter, daughter-in-law, mother, mother-in-law, father, father-in-law, sister, sister-in-law, brother, brother-in-law, aunt, uncle, niece, or nephew of any candidate for nomination or election. Upon any member of the board of elections becoming ineligible, that member's seat shall be declared vacant. This paragraph only applies if the county board of elections is conducting the election for which the relative is a candidate.

The State chairman of each political party shall have the right to recommend to the State Board of Elections three registered voters in each county for appointment to the board of elections for that county. If such recommendations are received by the Board 15 or more days before the last Tuesday in June 1985, and each two years thereafter, it shall be the duty of the State Board of Elections to appoint the county boards from the names thus recommended.

Whenever a vacancy occurs in the membership of a county board of elections for any cause the State chairman of the political party of the vacating member shall have the right to recommend two registered voters of the affected county for such office, and it shall be the duty of the State Board of Elections to fill the vacancy from the names thus recommended.

At the meeting of the county board of elections required by G.S. 163-31 to be held on Tuesday following the third Monday in July in the year of their appointment the members shall take the following oath of office:

"I, _____, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; and that I will well and truly execute the duties of the office of member of the _____ County Board of Elections to the best of my knowledge and ability, according to law; so help me God."

Each member of the county board of elections shall attend each instructional meeting held pursuant to G.S. 163-46, unless excused for good cause by the chairman of the board, and shall be paid the sum of twenty-five dollars (\$25.00) per day for attending each of those meetings.

§ 163-41.1. Certain relatives prohibited from serving together.

(a) The following categories of relatives are prohibited from serving as precinct officials of the same precinct: spouse, child, spouse of a child, sister or brother.

(b) No precinct official who is the ~~wife, husband~~ spouse, mother, father, son, daughter, brother or sister of any candidate for nomination or election may serve as precinct official during any primary or election in which such candidate participates. The county board of elections shall temporarily disqualify any such official for the specific primary or election involved and shall have authority to appoint a substitute official, from the same political party, to serve only during the primary or election at which such conflict exists.

§ 163-43. Ballot counters; appointment; qualifications; oath of office.

The county board of elections of any county may authorize the use of precinct ballot counters to aid the chief judges and judges of election in the counting of ballots in any precinct or precincts within the county. The county board of elections shall appoint the ballot counters it authorizes for each precinct or, in its discretion, the board may delegate authority to make such appointments to the precinct chief judge, specifying the number of ballot counters to be appointed for each precinct. A ballot counter must be a resident of the county in which the precinct is located.

No person shall be eligible to serve as a ballot counter, who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person shall be eligible to serve as a ballot counter, who serves as chairman of a state, congressional district, county, or precinct political party or political organization.

No person who is the ~~wife, husband~~ spouse, mother, father, son, daughter, brother or sister of any candidate for nomination or election may serve as ballot counter during any primary or election in which such candidate qualifies.

No person shall be eligible to serve as a ballot counter who is a candidate for nomination or election.

Upon acceptance of appointment, each ballot counter shall appear before the precinct chief judge at the voting place immediately at the close of the polls on the day of the primary or election and take the following oath to be administered by the chief judge:

"I, _____, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State not inconsistent with the Constitution of the United States; that I will honestly discharge the duties of ballot counter in _____ precinct, _____ County for primary (or election) held this day, and that I will fairly and honestly tabulate the votes cast in said primary (or election); so help me, God."

The names and addresses of all ballot counters serving in any precinct, whether appointed by the county board of elections or by the chief judge, shall be reported by the chief judge to the county board of elections at the county canvass following the primary or election.

CHAPTER 165 – VETERANS

§ 165-18. Rights conferred. [NOTE: This section has likely been recodified as G.S. 143B-1248 pursuant to § 24.1.(f) of Session Law 2015-241.]

(a) Any person under the age of 18 years who is the ~~husband or wife~~ spouse of a veteran, is hereby authorized and empowered in his or her own name, and without any order of court or the intervention of a guardian or trustee, to execute any and all contracts, conveyances, and instruments, to take title to property, to defend any action at law, and to do all other acts necessary to make fully available to such veteran, his or her family or dependents, all rights and benefits under the laws of the United States relating to veterans benefits, in as full and ample manner as if such minor ~~husband or wife~~ spouse of such veteran had attained the age of 18 years.

(b) Any person under the age of 18 years, who is the ~~husband or wife~~ spouse of a veteran, is hereby authorized and empowered in his or her own name, and without any order of court or the intervention of a guardian or trustee, to join in the execution of any contract, deed, conveyance or other instrument which may be deemed necessary to enable his or her veteran spouse to make full use of any property purchased pursuant to the provisions of the foregoing subsection, including the right to dispose of such property.

(c) With respect to any action at law or special proceeding in relation to any transaction within the purview of this Article, every minor person to whom this Article applies shall appear and plead in his or her own name and right without the intervention of any guardian or trustee; and every such minor person shall be considered a legal party to any such action at law or special proceeding in all respects as if such person had attained the age of 18 years. No such minor shall hereafter interpose the defense of lack of legal capacity by reason of age in connection with any transaction within the purview of this Article, nor disavow any such transaction upon coming of age.

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